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June 7, 2004

Vernon A. Williams
Secretary
Surface Transportation Board
The Mercury Building
1925 K Street, NW #700
Washington, DC 20423



Re: Section 5a Application No. 46 (Sub-No. 20)
Southern Motor Carriers Rate Conference, Inc.

Dear Secretary Williams:

Enclosed please find the original and ten copies of the Rebuttal of Southern Motor Carriers Rate Conference, Inc. To Reply Statements To Application filed in support of the above-styled proceeding requesting nationwide collective ratemaking authority on behalf of its member motor carriers.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "John R. Bagileo".

John R. Bagileo
Counsel for Southern Motor Carriers
Rate Conference, Inc.

Enclosures

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Before The
Surface Transportation Board

Section 5a Application No. 46 (Sub-No. 20)
Southern Motor Carriers Rate Conference, Inc.



Rebuttal Of
Southern Motor Carriers Rate Conference, Inc.
To Reply Statements To Application

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Counsel for Southern Motor Carriers Rate
Conference, Inc.

Due and Dated: June 7, 2004

Before The
Surface Transportation Board



Section 5a Application No. 46 (Sub-No. 20)
Southern Motor Carriers Rate Conference, Inc.

Rebuttal Of
Southern Motor Carriers Rate Conference, Inc.
To Reply Statements To Application

Southern Motor Carrier Rate Conference, Inc. (SMC), by counsel, files this its rebuttal to the statements filed in reply to SMC's application seeking nationwide collective ratemaking authority. Reply comments were submitted by the National Electrical Manufacturers Association, Transportation & Logistics Committee; the National Small Shipments Traffic Conference, Inc.; The National Industrial Transportation League; the U.S. Department of Transportation; and Rocky Mountain Tariff Bureau, Inc. EC-MAC Motor Carrier Services Association, Inc. adopted the comments submitted by Rocky Mountain Tariff Bureau, Inc.

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I.

Introduction

I.
Introduction

Following are the statements of Jack E. Middleton, President and Chief Executive Officer of applicant Southern Motor Carriers Rate Conference, Inc. (SMC); Danny B. Slaton, SMC's Vice President, Sales & Marketing; and Daniel M. Acker, SMC's Vice President, Operations. Each addresses specific contentions raised by various organizations in their reply statements filed with the Surface Transportation Board on May 24, 2004.

Generally, Mr. Middleton responds to the alleged need to include shippers and transportation intermediaries in the collective ratemaking process by detailing the efforts currently made by SMC to achieve that end, and the information provided by SMC to the public regarding General Rate Committee meetings and General Rate Actions. Furthermore, he addresses incorrect statements made with reference to a purported challenge to a past SMC general rate action, and to the alleged basis of the voluntary 20 percent automatic minimum discount from SMC's class rates established by SMC's member carriers. Mr. Middleton also discusses the absence of any merit to the suggestion that should regional class rates not be available, the problem could be resolved for carriers and shippers by the publication of individual carrier baselines.

Mr. Slaton replies to erroneous assertions concerning the pricing of SMC's software products, and the serious and incorrect allegation that SMC ties the purchase of CZAR-Lite to other SMC products. He identifies the numerous software competitors already in the motor carrier transportation market, and dispels the notion that SMC's products are the sole pricing tool available to the transportation community. Mr. Slaton also points out that while a generalized complaint is made regarding the pricing of licenses to use SMC's products, the fact is that those

licensing fees have remained the same for five years and there is no increase under consideration. Further, in reference to the allegations that SMC does not work with third party intermediaries in meeting their needs, Mr. Slaton details SMC's close contact with 3PLs and their direct involvement in SMC's programs, and in the development of SMC's products.

Mr. Acker, in response to the contentions that there are any number of baselines available to shippers and carriers, demonstrates the real world problems created by that multiplicity of pricing mechanisms, which difficulties explain why CZAR-Lite has experienced such growth among shippers and carriers. He further explains the regional differences in carrier costs, and how the failure to account for those differences ultimately will undermine the offering of discount by carriers. Moreover, he explains why the criticism of the rate comparisons of SMC's class rates with those of non-member, LTL carriers operating in Southern Territory are incorrect, and the value of those comparisons in assessing the reasonableness of SMC's class rate baseline. Mr. Acker also points out that the impact of non-union driver wages on SMC's lower class rates are overstated because the driver shortage has created rising driver wages which are closing the gap between non-union and union driver pay scales.

Finally, SMC's counsel responds to the legal and factual errors contained in the various reply statements. It is indicated that while SMC does not object to the STB's imposition of conditions should its nationwide application be granted, the conditions presented by NASSTRAC, and supported by NEMA, are either unnecessary or not reasonable. Additionally, issue is taken with various contentions by NITL, DOT, and RMB which misstate SMC's position and the competitive effects which would result from the ability of SMC to conduct nationwide collective ratemaking activities on behalf of its member carriers. Importantly, the failure of various parties to acknowledge or address the shipper and transportation intermediary support

presented on this record is highlighted. Also, RMB's erroneous contentions regarding the nature of the operations of SMC's member motor carriers, and misstatements regarding SMC's supporting member statements, are corrected.

**II.
Rebuttal
Statement
of
Jack E. Middleton
President and Chief Executive Officer**

II.
Rebuttal Statement
of
Jack E. Middleton

I am SMC's President and Chief Executive Officer, and am the same Jack E. Middleton who submitted an initial statement in this proceeding.

SMC is pleased that the National Electrical Manufacturers Association, Transportation & Logistics Committee (NEMA) and the National Small Shipments Traffic Conference, Inc. (NASSTRAC) find merit in SMC's nationwide collective ratemaking application. SMC is certainly willing to implement or comply with such conditions as the Surface Transportation Board finds are necessary because of a grant of SMC's application or that of any other motor carrier ratemaking organization. But, we do not believe that the conditions identified by NASSTRAC and NEMA are required or reasonable. SMC has made a number of efforts to have NASSTRAC representatives, and National Industrial Transportation League (NITL) officials, attend SMC General Rate Committee meetings to view our collective ratemaking process firsthand. I personally have extended invitations by telephone and letter to NASSTRAC and NITL. Unfortunately, to date, those efforts have not been successful. I believe that the conditions sought by NASSTRAC, and supported by NEMA, are the result of their lack of familiarity with SMC's procedures.

Two of NASSTRAC's primary concerns are related to the pricing of SMC's products and an alleged requirement that the purchase of CZAR-Lite is tied with RateWare, and the double counting of the cost of fuel in a General Rate Increase action. The accompanying statement of Danny B. Slaton, SMC's Vice President, Sales and Marketing, responds in detail to allegations regarding SMC's pricing and a tying of products. As shown neither point is valid. If, as NASSTRAC speculates, SMC should engage in the "monopoly pricing" of its software products

and in tying arrangements, those actions would not be immunized from the antitrust laws. (NASSTRAC, pp. 16-17.) The purported activities would not be collective ratemaking actions conducted under SMC's Section 5a procedures which are the only activities conducted with antitrust immunity. If SMC's nationwide application is approved, the conduct of those activities would still be beyond the approved activities of SMC's 5a agreement, and I believe would constitute violations of the antitrust laws.

NASSTRAC contends that fuel price increases, even though a fuel surcharge is assessed to offset those increases, is again counted in carrier costs in general rate increase actions. As stated in the accompanying rebuttal statement of Daniel M. Acker, SMC's Vice President, Operations, that allegation is not correct as to SMC. Fuel cost increases are not and have not been included since 1995.

SMC makes every effort to encourage and facilitate shipper participation in its General Rate Committee (GRC) meetings and general rate increase actions. It has had success in having individual shipper and transportation intermediaries attend SMC GRC meetings. Shipper associations, including NASSTRAC and NITL, unfortunately have not accepted, thus far, those invitations.

SMC has a list of some 5,000 companies, associations and individuals to whom notices about SMC and GRC meetings are provided. The overwhelming majority of those organizations are shipper and transportation intermediaries. Those notices include SMC's Weekly Information Bulletin, which advises the recipient of SMC activities, including GRI proposals and public meetings, and the White Paper distributed in connection with each General Rate action explaining the results of the Carrier Cost Index and the other factors which underpin that collective rate action. As NASSTRAC points out, SMC has a website which NASSTRAC acknowledges is "more useful and informative than those of the other bureaus . . ." (NASSTRAC

Reply, p. 10.) SMC instituted that website about six years ago, and includes on it all notices which are distributed to the public, as well as other information pertaining to SMC's activities, products, available services, and educational opportunities.

SMC wishes to correct obvious misstatements by NASSTRAC regarding its alleged protest of SMC's 1999 GRI, and the basis for the automatic minimum discount of 20 percent adopted by SMC.

As the agency's records will show, no shipper association, including NASSTRAC, or any other person, protested SMC's 1999 GRI. That fact was confirmed by Debra Phillips, NASSTRAC's former Executive Director, in her address at SMC's January, 2000 Annual Meeting in Atlanta, a copy of which is appended to my statement as Attachment A. Ms Phillips stated:

As you may be aware, last fall, the Surface Transportation Board suspended General Rate Increases proposed by four rate bureaus, following protests filed by NASSTRAC and our sister association the Health and Personal Care Distribution Conference. In its decision, the STB noted that the four rate bureaus in question did not provide quantified evidence to support their contention that increased costs justified the proposed rate increases.

I would like to note that NASSTRAC and the Health and Personal Care Distribution Conference did not protest the general rate increases proposed by SMC or PITB. SMC, in particular, provided detailed information about its proposed increase (which was more modest than the other rate bureaus) and included across the board discounts for shippers who lack other discount programs.¹

¹ Ms. Phillips commented on SMC's nationwide application as follows: "... NASSTRAC was sorry to learn that nationwide authority by rate bureaus was killed by Congress. We supported this idea, as did SMC, and feel that competition is good not just for shippers and carriers, but also for carrier rate bureaus."

SMC's General Rate Committee adopted the 20 percent automatic minimum discount in response to the STB's expressed concern in its 1998 Decision that there may be unsophisticated

shippers who pay undiscounted class rates. The 20 percent discount had nothing to do with the level of class rates in SMC's ratemaking territory, but was based upon the range of discounts which was applied by SMC's member carriers, with 21 percent being the low end of that range. Even though no shipper had come forward alleging that it was without a discount, and even though no information was provided as to the transportation characteristics of the traffic of any such shipper, the SMC GRC believed a 20 percent discount would be fairly related to the range of discounts provided to shippers based on their traffic characteristics and volumes, and would allay STB concerns regarding unsophisticated shippers who may be unaware of carrier discounting practices.

NASSTRAC's dismissal of the role class rate tariffs have in facilitating interline arrangements is incorrect. (NASSTRAC Reply, p. 10.) Apparently not understood is the fact that the collectively-established class rates published in SMC's tariff are the joint rates upon which interline arrangements are formulated. That there are no problems with interline arrangements today is, by and large, the result of the application and availability of those class rates. SMC's member carriers would be assisted in entering into interline arrangements beyond Southern Territory if they could establish class rates coextensive with the transportation operators their shippers require them to provide.

In my initial statement, I explained the considerable problems created for shippers and carriers because of the differing dates some rate bureaus implement their GRIs. Not only does that delay adversely affect the ability of shippers and carriers to conduct or implement rate negotiations through CZAR-Lite, but needed carrier rate increases must await actions by other carriers in other bureaus. Equally affected is MARS, the competitive class rate pricing mechanism of Middlewest Motor Freight Bureau, Inc. Individual shipper and carrier rating systems which are constructed on class rates are similarly disadvantaged. Thus, contrary to

Rocky Mountain Tariff Bureau, Inc.'s (RMB) contention that only SMC is affected by those delays in its proprietary endeavors, shippers and carriers alike are impacted because of those failures. This most recent round of general rate actions underscores the problem I identified. While all other bureaus have docketed or approved a GRI, no proposal has been announced by EC-MAC. Efforts by SMC staff, acting at my direction, to find out what action will be taken by EC-MAC have gotten no definitive response. Carrier members of SMC have reported to SMC that they also have been unsuccessful in getting a response from EC-MAC as to when and whether a GRI proposal will be docketed and when action will be taken on any proposal to be made. That failure will disrupt the pricing strategies and negotiations of shippers and carriers both within and outside of Southern Territory. Motor carrier ratemaking associations, shippers and carriers should be in that position, and granting nationwide ratemaking authority would obviate the reliance on other bureaus and the resulting disruption created when a regional bureau fails to act.

Throughout its comments RMB offers the departure of motor carriers from the class rate system to individual tariffs as one of the solutions to the various problems identified by SMC with delays in the implementation of GRIs or the levels of the class rates extant in other territories. That approach would only create greater problems for the carrier and shipper baselines for negotiating their pricing needs, and which would serve the needs of neither group. It is well recognized that the proliferation of shipper specific tariffs harm the competitiveness of the carriers and raises their costs of doing business. (See Attachment B). As has been pointed by Ray Bohman, a well-known shipper consultant, many shippers that use a number of LTL carriers have found the CZAR-Lite and MARS base rate scales "to be extremely useful in rate negotiations." In addition to finding those systems to be readily available, he believes the rates themselves are "fair and reasonable." Mr. Bohman states that he has seen "numerous instances

in which CZAR-Lite and MARS rates are lower than rates maintained by any of the individual carriers.” (See Attachment C). Individually determined rates simply are not the solution or panacea RMB contends they are.

In attempting to argue that the only beneficiary of granting the pending nationwide application would be SMC, RMB ignores the realities of the transportation market. Numerous shippers and transportation intermediaries use CZAR-Lite as their pricing guideline. Indeed, it is no secret that many shippers and transportation intermediaries insist on the use of that baseline in their rate negotiations and price comparisons. Updating that baseline of class rates is extremely important in maintaining its usefulness as a pricing tool for both the shipper and carrier who rely on those class rate scales in the pricing of motor carrier services. Failure to do so only diminishes its usefulness by rendering those class rate scales obsolete and unresponsive to the carriers’ needs to recover current costs and meet revenue needs to improve their service capacity through higher driver wages, the purchase of new equipment, and the increase of capital investment in terminals and other operating facilities. Additionally, both the carriers and the shippers they serve are benefited when the class rates upon which their pricing depends are tailored to their operations, and not those of carriers operating in other regions. It is the entire transportation community which has a stake in SMC’s application, and not only SMC as RMB self-servingly contends.

Respectfully submitted,


Jack E. Middleton

Attachment A**SMC Speech**

Good morning. It is an honor to be asked to speak before this group and to share NASSTRAC's perspective about 21st Century Transportation Trends. I began working in the industry as Public Relations and Advertising Manager for Carolina Freight Corporation in 1989. One of my first assignments was to write the company's annual report. Having a journalism background, writing was no problem. But, I soon discovered that the transportation industry had a language all its own—OS & D, piggy backs, break bulks, pups. These were all confusing. Then, I heard about dead heads and reefers, and I thought, hey, I can do this. I have known plenty of dead heads, and unlike President Clinton, I'm not even going to comment about reefers.

Now, a little over a decade later, I am still having trouble with the language, especially in view of the plethora of vertically integrated full service supply chain providers looking to help us with everything from reverse logistics to fourth party fulfillment.

Seriously, it is a complex and changing industry, much closer to "Star Wars" than "Smokey and the Bandit." And, as we move into the 21st century, increased globalization, mergers and acquisitions among both carriers and shippers, and e-commerce are all realities that affect the transportation landscape. Like the UPS television commercial so clearly depicts, e-commerce is not magic. You don't press a button on your keyboard and have a retail item pop out of your lap top.

The rate of change in the industry is accelerated, and I think the one trend we can count on is that we will continue to operate in a rapidly changing marketplace. At the same time, I think both shippers and providers are working in leaner environments with fewer resources to handle more responsibilities. That is where organizations such as NASSTRAC and SMC play an important role - by helping both new and experienced practitioners define and understand the changes taking place in this environment.

I would like to take a few moments to describe who we are and what we do. Further, I would like to discuss our view of cooperation as a means of advancing both shipper and provider objectives.

NASSTRAC stands for National Small Shipments Traffic Conference. First of all, I would like to make a distinction between small shipments and small shippers. While we certainly welcome companies of any size to be a part of our organization, our membership is primarily made up of large companies, such as ITT, Harley Davidson, Revlon, Johnson & Johnson and others whose supply chain strategies rely heavily on shipping product by less than truckload or parcel carriers.

This distinction is a part of our history. NASSTRAC was founded in 1952 by a group of approximately 100 shippers who met to develop a strategy for dealing with surcharges on LTL shipments. Our mission is much broader now, and the changes in the LTL industry are vast. However, I think we can all agree, that dynamics of operating and using LTL

transportation are still very complex and that we face different issues than truckload, private fleets or dedicated contract carriage providers.

Today, NASSTRAC's mission is to promote the goals of our members in support of their supply chain responsibilities through Advocacy, Education, Professional Interaction and Provider Relations.

Advocacy

*represent both global and domestic shipper interests in a number of venues:

STB
DOT
FMC or FAA
Courts
Congress

Education

As the industry has become deregulated, the level of expertise needed by practitioners in order to be effective has steadily increased. Therefore, we have increased our emphasis on education and are pleased to have Dr. Bernard "Bud" La Londe, Professor Emeritus of The Ohio State University, as Education Advisor. We strive to offer focused educational programs that provide both strategic and tactical information to our members. Journalists, economists, analysts, attorneys and practitioners all play an active role in the NASSTRAC educational program. Carriers and other providers are also an integral part of these programs.

Spring Meeting
Naples, Florida
April 24-27
*Carrier CEO roundtable
*Financial review of the industry
*e-commerce strategies
*global best practices

Fall meeting
Baltimore, MD inner harbor
September 17-19

Professional Interaction

*answers to questions
*career development

Provider Relations

Shippers are looking for long term relationships with carriers who understand their business so that they can better serve their customers. NASSTRAC promotes these relationships through its Provider Relations Committee.

- *bill of lading in NMFC, endorsed by Traffic World magazine, resulted from the efforts of a working group including carrier and NASSTRAC representatives
- *our members participate in a joint working group with NITL and frequently coordinate with other shippers and associations
- *actively involve carriers in the organization
- *carriers allowed to attend all meetings
- *sub-committee formed from this group

I would like to take a few moments to discuss some of the issues that NASSTRAC sees on the horizon for this year, and our view.

Rate Bureaus

I don't want to spend a lot of time on this topic, but since I am speaking at an event sponsored by the SMC, I would be remiss if I did not touch on this issue. As you may be aware, last fall, the Surface Transportation Board suspended General Rate Increases proposed by four rate bureaus, following protests filed by NASSTRAC and our sister association, the Health and Personal Care Distribution Conference. In its decision, the STB noted that the four rate bureaus in question did not provide quantifiable evidence to support their contention that increased costs justified the proposed rate increases. The STB also commented that there are many varieties of options open to motor carriers to increase their revenues, most of which are not subject to the STB's rate reasonableness jurisdiction.

I would like to note that NASSTRAC and the Health and Personal Care Distribution Conference did not protest the general rate increases proposed by the SMC or PITB. SMC, in particular, provided detailed information about its proposed increase (which was more modest than the other rate bureaus') and included across the board discounts for shippers who lack other discount programs. NASSTRAC is concerned on behalf of shippers who do not have contracts in place with selected carriers. Further, even shippers who do have contracts may receive inbound freight from a supplier or customer that moved via a carrier with whom they have no contract.

Going forward, we are looking for rate bureaus to do the following:

- *strive to promote competition
- *offer a safety net for smaller, newer or less sophisticated shippers
- *institute general rate increases only when needed to reflect cost increases, not for profit enhancement

I would like to commend SMC for its efforts to meet these criteria.

At the end of the day, any motor carrier, shipper company, or association's success will be determined by its understanding of the marketplace, its operating efficiency and the level of services it provides.

To that point, NASSTRAC was sorry to learn that nationwide authority by rate bureaus was killed by Congress. We supported this idea, as did SMC, and feel that competition is good not just for shippers and carriers, but also for carrier rate bureaus.

Productivity

Another area in which NASSTRAC and our carrier partners have common concerns is productivity. NASSTRAC has gone on record supporting measures that would allow trucking companies to enhance their levels of productivity. NASSTRAC is concerned with safety and does not support any act that would jeopardize motorists. However, we do not condone limiting productivity in one mode of transport to ensure profits for another. In my mind, this would be like General Motors, realizing that Ford could make mini vans more cost effectively than they can and get their product to market faster and going to the government asking them to intervene by cutting Ford's production schedule so they, General Motors, could continue to be profitable.

We will continue to work closely with organizations such as the ATA and Motor Freight Carriers Association to lend our support in improving trucking productivity.

Hours of Service

We are not in the trucking business, so we would not presume to tell carriers what hours of service should be. However, we are dramatically affected by any changes in this area. As we all know, companies are looking to reduce inventories, cut cycle times and many operate in a JIT environment. If trucking hours of service are changed in a way that compromises the ability of carriers to meet shipper needs, this will be detrimental to carriers and shippers.

Many of the major motor carriers are unionized and already operate under very strict rules about hours of service. Further, the ATA reports an improved safety record for the entire trucking industry for 1999. This leads me to evoke the wisdom of my late father, who was an automobile mechanic for 44 years. If it ain't broke, don't mess with it.

New Modal Administration

That thought leads to our views regarding the new Federal Motor Carrier Safety Administration within the DOT, which is comparable to the Federal Railway Administration. NASSTRAC definitely believes that the motor carrier industry warrants its own modal administration to ensure that decisions are made that meet the needs of users and operators of this form of transportation. We are concerned, however, about the possibility of over-zealous enforcement of safety measures that could cripple commerce.

OSHA

Both NASSTRAC's carrier and shipper members will be strongly impacted by OSHA's proposed new rules on ergonomics.

These new rules were passed in November 1999 to eliminate work related musculoskeletal disorders and are estimated to affect one third of all American worksites. The financial implications are also great.

Some business representatives have questioned whether there is scientific support for these new rules. Others think they are too far reaching. Also controversial are some of the specific features of the proposal, including the requirement that some 1.6 million employers must implement an ergonomics program if even a single musculoskeletal disorder occurs. It has been a while since I took statistics in college, but I do not recall one incident being indicative of a trend. Whether your business has employees stacking cookies into containers or you are a motor carrier with employees operating tow motors, there are serious implications.

NASSTRAC will maintain close contact with our partners at ATA and MFCA to offer possible support for any actions taken by these organizations to minimize the effects of these rules.

NASSTRAC's members recognize and appreciate the tremendous strides made by the trucking industry since 1980 in reengineering trucking operations to meet the needs of globalization and the supply chain revolution. Trucking's dominant share of the transportation marketplace is well deserved and reflects superior service and responsiveness to the needs of shippers and receivers. Your contributions to America's economic boom are too seldom recognized, but we are grateful.

There are many other items on the radar screen for our industry in the coming year, but I realize that I am the only thing standing between you and lunch, so I will close with these thoughts. Although 80 percent of all products in the United States move via trucks, our industry is not always top of mind with our elected officials. This is especially true in an election year when higher level issues are being discussed—things like health care reform, consumer tax cuts, whether George W. Bush knows the presidents of every foreign country in the world and Linda Tripp's cosmetic surgery. Given that this is the playing field, the positions of both shippers and providers are strengthened through cooperation. We may not ever be on the same side of some issues, but by working together, we can definitely narrow the gap.

Attachment B

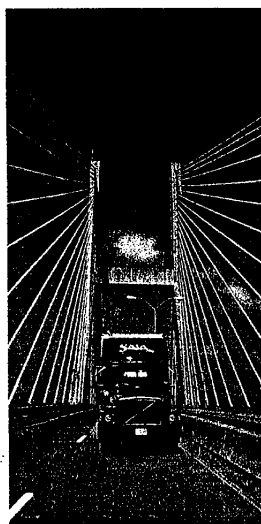
Growing use of shipper tariffs is hurting LTLs

Research shows that an increase in the number of shipper-specific tariffs harms carriers' competitiveness while raising their costs.

A surge in the number of less-than-truckload (LTL) tariffs over the past few years could be weakening the ability of LTL carriers to price their services competitively. The average LTL carrier now has between 200 and 300 active tariffs, according to the results of a survey conducted by Norbridge Inc., a consulting firm in Concord, Mass. The study, based on responses from pricing and marketing directors and vice presidents at 14 leading LTL carriers, outlines current LTL tariff usage and expected pricing trends.

For most respondents, the number of active tariffs they work with has significantly increased in the past five years, due in large part to a trend toward more shipper-specific tariffs. Although using a single tariff makes life easier for the shipper and simplifies bid comparisons, carriers contend that the proliferation of individual, customized tariffs makes business more complex on their end. The problem, says Norbridge Senior Partner

Lee Clair, is that as shippers attempt to better understand their own logistics operations and decide what they should be pay-



ing for freight, they are using techniques that undermine a carrier's ability to be competitive.

"To create comparability, shippers are creating their own tariffs, or they're picking some 'foreign' tariff and calling it a standard," he says. "Then they invite the carriers to

bid on their business as a discount off that stated tariff." But that may not get them the best rates, he says. "Because the carriers are bidding off tariffs they don't know as well and aren't contoured to their networks, they're not able to give their most competitive prices," he explains.

The growing use of shipper and third-party tariffs also appears to be costly for the carriers. Just one-third of respondents' revenues come from tariffs devised by shippers, third-party logistics companies (3PLs), and other motor carriers, even though they represent nearly two-thirds (63 percent) of tariffs currently in use. By contrast, respondents reported that 50 percent of their revenues come from shipments moved under their own tariffs, even though they represent only 11 percent of active tariffs.

In addition, the growing number of single-user tariffs is raising administrative costs for carriers. Although computer systems ease that burden somewhat, carriers still

INSIDE

- **Shippers win first round in cargo liability case**

Court rules insurance protections apply to contract carriage under Interstate Commerce Commission Termination Act of 1995.

- **Customs adapts to new name, new structure**

Change management and labor relations are two of the big issues the merged agency must contend with.

"We cannot be held back by [collective bargaining agreements] and we will not."

Andrew B. Maner
CHIEF OF STAFF,
BUREAU OF CUSTOMS AND
BORDER PROTECTION

- **U.S., Canada sign agreement to enhance rail security**

- **WMS sales begin to rebound after two-year slump**



~ Late-breaking industry news at our Web site, WWW.LOGISTICSMGMT.COM

Attachment C

BOHMAN ON PRICING

CzarLite and MARS: Two LTL pricing alternatives

As you well know, just about every LTL carrier in the country has developed its own individual scale of class rates, and some carriers have more than one. But that doesn't necessarily mean that if you're dealing with a particular carrier, you're locked into using its individually established rates. There are alternatives—namely, nationwide rating systems that have been developed by regional motor carrier rate bureaus.

The two systems most widely used today are "CzarLite," created by SMC³ (formerly called the Southern Motor Carriers Rate Conference), and the Midwest Motor Freight Bureau's MARS 500. These two rate scales closely mirror rate bureau rates in every region of the country and have been developed to provide a standard, uniform benchmark level of rates without any carrier-specific adjustments, which can be difficult and costly to find.

Many shippers that use multiple LTL carriers find these base rate scales to be extremely useful in rate negotiations, particularly when annual contracts are open for bidding. With these systems, every carrier is bidding off the same rate scale.

The systems themselves are readily available. If a shipper wishes to have its LTL carriers use CzarLite or MARS pricing for their base rates, it simply secures a license from SMC³ or the MWMFB and then incorporates those systems into any contracts it negotiates. (Carriers themselves do not become party to CzarLite or MARS rates as they do when using bureau class rates.)

And the rates themselves are fair and reasonable. In using ABM Transportation Services' "RateShopper" software, which compares LTL rates of multiple carriers on any given lane, I've seen numerous instances in which CzarLite and MARS rates are lower than rates maintained by

any of the individual carriers. (For more information about RateShopper, log onto ABM's Web site: www.abmrate.com.)

Neither CzarLite nor MARS is limited to rates between points in the continental United States. In addition to their domestic systems, both bureaus offer rating systems between all points in the continental United States and all points in Canada. SMC³ calls its service CanadaLite, and the MWMFB's is named MARS 510.

How popular are these systems? SMC³ says that "independent analysis has [shown] that CzarLite is used annually as the base for over \$8 billion in LTL transportation [contracts]."

Both products are available to shippers through a license arrangement. CzarLite's annual fee is based upon a shipper's annual sales revenue, while access to MARS is available for a flat fee, regardless of sales.

For more information about CzarLite, log onto the SMC³'s Web site (<http://www.smcsystems.com>) or call (800) 845-8090. The address is SMC³, 500 Westpark Drive, Suite 300, P.O. Box 2040, Peachtree City, GA 30269.

If you'd like more information about MARS, visit the MWMFB's Web site (www.midwest.com) or call (800) 545-7091. The address is MWMFB, 4528 Bellevue Ave., Suite 100, Kansas City, MO 64111-3566.



"Many shippers that use multiple LTL carriers find the CzarLite and MARS rating systems to be extremely useful in rate negotiations."

Ray Bohman, a well-known consultant and author, is editor of several highly successful newsletters on transportation and is a consultant to a number of national trade associations. He is president of The Bohman Group, consultants and publishers in the freight-transportation field. His offices are located at 27 Bay Lane, Chatham, MA 02633. Phone: (508) 945-2272.

**III.
Rebuttal
Statement
of
Danny B. Slaton
Vice President, Sales and Marketing**

III.
Rebuttal Statement
of
Danny B. Slaton

I am SMC's Vice President, Sales & Marketing and am the same Danny B. Slaton who submitted an initial statement in the proceeding.

In reply comments to the STB, NASSTRAC and others submitted their concerns regarding SMC's pricing and licensing of CzarLite. Any discussion of this topic must include a review of the variety of baseline pricing options and strategies available to shippers and their third party logistics providers as well as an examination of the technology strategy used by SMC to deploy CzarLite to this market.

In this modern era of transportation the shipper's default and standard base rate option is the individual price list of each carrier they use as a transportation provider. Any other option involves a deliberate and strategic change action by the shipper or 3PL. The shipper/3PL may select any of these individual carriers' tariffs as a baseline for all providers – a strategy which is “free” to the shipper. If none of these options are suitable to the shipper/3PL, then they have a variety of commercial for-pay options available, including base rates offered by five bureaus (SMC, PIN, MWB, RMB, EC-MAC) and a variety of custom base rates designed by various industry consultants (Tranzact, Transite, TCI Logistics, Simplified Logistics, GR Leonard and Company, and others). These consultant price lists typically are designed to leverage the unique shipping characteristics of each individual shipper client or take a unique look at the LTL pricing equation. These price lists may work well for the represented shipper but they create havoc for an increasingly complex industry pricing system. Think about the problems a single shipper faces analyzing multiple carriers tariffs; now consider a carrier's dilemma if each shipper presents its own “custom tariff” to each carrier.

SMC's petition for nationwide authority causes NASSTRAC to voice concerns for their shipper and 3PL members and Rocky Mountain Tariff Bureau to question the reality of shippers' support for SMC's initiative. In a marketplace where each carrier's nationwide tariff has more than 50 billion rates

and the various FAK constructions, discounts and other modifications create an incalculable number of rating permutations, shippers look for meaningful and dependable ways to bring intelligence to their purchases of transportation. There are many options and for some shippers and 3PLs, the option of SMC is a fair and balanced approach. Their decision to use a single baseline for all their carrier agreements is an obvious benefit, and the fact that SMC tariffs are a collective representation of carrier input supported with meaningful research that is open to the shipper and monitored by the STB, gives credibility to their selection of SMC's product. But NASSTRAC and NITL's shippers and 3PLs do not operate on theory alone and the attached exhibits bring analytical credibility to their decision to use SMC base rates.

Exhibit One demonstrates how SMC rates and a popular LTL carrier's rates trend over a 14-year period. The graph tracks the revenue of an average LTL shipment of 1,148 pounds (from the National Traffic Database), from a point of origin in the south (Peachtree City, GA) to all Zip codes served by the current SMC territory. The graph demonstrates how in 1989 the individual carrier and the SMC base rates had an almost identical relationship. This is predictable since the carrier was transitioning from an era of pricing regulation to the current era of individual pricing. The next indexed period of 2003 shows how the same individual carrier's pricing reflects hundreds of individual decisions and is very different from its previous pricing and from the SMC carrier composite group, again predictable. However, the SMC tariffs perform and track similarly to their earlier version, a characteristic of SMC's baseline rates. Changes in the SMC base primarily reflect the increased cost and revenue requirements of the carrier group obtained through studies of data submitted by the group. The challenge of using individual carrier pricing versus SMC's industry baseline pricing is manageable across one carrier, but often shippers require more than one carrier in their transportation pool. Imagine a shipper's dilemma when that pool involves multiple core carriers using individual base rates serving overlapping markets.

The second exhibit demonstrates the challenge of a shipper's analysis when multiple carriers are used. This graph shows the individual variance of four random carriers' individual rates and the SMC base rates. The individual tariffs show the lane variability of individual carrier base rates versus the more predictable trending of the SMC base, and this is prior to any application of discounting and FAK

structuring. This challenge can be resolved by selecting the SMC rate structures as a base. Then by using well-designed processes and transportation technology, the shipper and these same carriers can develop intelligent and manageable pricing agreements at a very specific geographic level, such as a Zip code lane or state-to-state bases.

No matter which of the above strategies are employed, it is the shipper who opts out of the individual carrier-pricing rule and selects a baseline price strategy. This is true even at the level of third party providers and small, unsophisticated shippers. Given the “free” nature of adopting a carrier rate as a base, all of the “for pay” base rates, including CzarLite, must return an appropriate economic value. By design it is the shipper who licenses and pays for the use of CzarLite rates after careful consideration of overall costs versus economic value returned; therefore it is not the carrier who dictates the use of CzarLite. This is an important but often missed aspect of the CzarLite licensing process but fundamental to its success within the shipper and 3PL community. As a matter of record, many of the responders to the SMC filing do not recognize this modern day nuance to the pricing practices of the LTL marketplace.

SMC delivers its CzarLite products to the transportation marketplace of carriers, shippers, 3PLs and the software providers who support them through a variety of end user software products and a similar variety of application program interfaces (APIs). This product strategy should be very familiar to NASSTRAC members and others within the transportation community because it is the same strategy used by all the major providers of mileage data to the same marketplace (ALK Associates, Rand McNally, ProMiles, Prophecy, etc). End user tools provide the data content in the most directly useable and least expensive method while the non-proprietary APIs provide the data content in a delivery that supports various technology platforms, thereby allowing powerful integration to multiple systems and tools while assuring the accuracy and timeliness of the data delivery. This approach provides a wide range of options for shippers, carriers, 3PLs and the technology community while protecting the intellectual property and proprietary interest of the source data.

If there is any difference between the strategy of these mileage providers and SMC, it is in the fact that SMC can deliver their product in a much wider variety of technology options (IBM mainframe,

AS400/iSeries, Windows, UNIX, LINUX, Internet delivery and others under development). This variety of delivery is an important aspect of CzarLite, bringing value to customers but requiring that SMC invest in technical workers, technical infrastructure and all the support resources required by the market. These systems and their delivery have been developed under the advisement and guidance of specialists in intellectual property rights, allowing SMC to provide the most comprehensive and broad-based delivery of CzarLite rating tools within the context of protecting its rights to protect the source data. NASSTRAC's concerns regarding these important issues are understandable and SMC would welcome the opportunity to discuss this special area of interest with appropriate NASSTRAC representatives.

With this understanding as the backdrop for discussion, it is important to address those concerns and issues voiced by NASSTRAC. A shipper or 3PL's license for use of CzarLite as a base rate is scaled toward the size of the business enterprise. This pricing structure is a very common practice in the licensing of intellectual content. Using this size based pricing means that smaller companies pay less than their larger counterparts. Each of these shipper/3PL licenses includes the customer's choice of basic CzarLite computing technology. SMC has priced the shipper and 3PL license under an enterprise scale for more than a decade. The majority of customers consider it a fair and balanced approach, and the licensing fees in place today have remained the same for five years with no increase under consideration.

However, as with any pricing system there are company processes and business segments that do not neatly fit within the system and in order to support these exceptions, SMC has developed pricing for those vertical markets that need commercial access to CzarLite but do not fit under this enterprise structure due to their limited or specific use of CzarLite intellectual property. Excellent examples of exceptions are the freight payment market and certain e-commerce models. These segments serve the shipper and 3PL markets and their compensation model is often on a "per shipment basis"; therefore SMC, responding to customer requests, developed a per-transaction pricing model that recognizes their limited usage of the product and delivers it at a cost of a few pennies per inquiry.

Similar limited use licensing and pricing has been developed to satisfy the system requirements of motor carriers, on-line brokers and consultants who require access to CzarLite for limited but very

strategic processes. The transaction price for these arrangements can run from \$0.05 (five cents) per transaction for small and medium users to less than \$0.01 (one cent) per bill for large users. For example, the nickel cost for a medium-sized LTL carrier to use SMC technology to rate the average CzarLite shipment (\$179, from SMC's National Traffic Database) is .00027 of the billed revenue. This less than three one hundredths of a percent cost does not seem excessive — and, it is important to again emphasize that the per-transaction pricing was developed at the request of these markets as a way for SMC to give special markets access to CzarLite at a reduced price without undermining pricing agreements with “power users.”

SMC agrees with NASSTRAC's inference that CzarLite's continued market penetration through increased sales or the obtaining of nationwide authority will lower pricing of the technology that drives CzarLite. This has already been achieved in the most mature CzarLite technology where the larger customer markets and declining development costs have led to decreased pricing. However, the real gains that can be obtained in reducing the delivered price of CzarLite will be made through advancements in the technical systems that support it. SMC is developing web-based CzarLite delivery systems, which will reduce costs while increasing value through improved interfaces and computing throughput, expanded services, and decreased maintenance and update costs. SMC has offered these new delivery systems to the marketplace (including specific talks with 3PL members of NASSTRAC) as low cost alternatives and they will be featured in the next release of its catalog of products. These future technology gains can only be supplied to NASSTRAC shippers, carriers and 3PLs because the current pricing and licensing structures provide the required financial resources for research and development, and the building of required technical networks.

Another way of reducing costs and improving the CzarLite product can only be conducted with the STB's granting of nationwide authority. CzarLite as it exists in raw form is a mishmash of data structures, rating applications and pricing formulas representing 11 different tariffs and 18 unique sections of rate applications. These raw data files are intelligently combined by SMC industry experts into 16 different data files. The resulting amalgamation of data layouts, business rules and programming

instructions is expressed in a technical document containing six pages of rules for programming and 24 pages of database descriptions. In contrast, the same documentation for a popular and typical individual carrier tariff consists of six files and one page of user documentation. The complexity and challenge of managing this data is compounded when general rate increase dates are staggered (as they often are) and any of the data components are modified (which frequently occurs).

A similar problem associated with the use of baseline pricing developed under the current regional territory structure is the inconsistent trending of rates that occur at bureau territorial borders. When these borders are examined in a rate analysis there can be abrupt changes as rates move from one bureau's baseline rate to that of another. Examples of these boundary issues include the division of the state of Colorado between SMC and RMB for movements into the Southeast region, the rates between western New York and the Central, Middlewest and Southwest regions are fractured across the three-digit Zip code basing of EC-MAC and the five-digit Zip code basing of MWB. Similar MWB/EC-MAC situations exist between NY Zip area 147, PA Zips 153-167 and WV Zips 250-256. The perfect storm of all bureau boundaries occur in northern KY and the Cincinnati, OH area where basing for EC-MAC, MWB, RMB and SMC converge in both a three-digit and five-digit basing dilemma. These events occur throughout the current bureau based system and are frequently exacerbated by U.S. Postal Zip code changes managed differently by each bureau. This system may have been rational in some previous era of motor carrier transportation but it has no logical justification in today's transportation reality.

All of this data hoop jumping is out of date with the contemporary standards for information management and data design. Nationwide authority would allow SMC to take a new look at antiquated processes and intelligently simplify the data and programming rules to contemporary standards that benefit the shipper/3PL. These data solutions have multiple payoffs to the users of CzarLite, including improvements in processing speed and throughput, simplified updates and maintenance of data, single releases during increase periods and a consistent product delivery. Nationwide authority would also allow SMC to address the bureau border crossing anomalies as discussed above. SMC's traffic studies, tariff construction expertise, industry input and rating technology would be directed at a solution to this

historical problem. These quality improvements are beneficial to the everyday use of CzarLite as a base rate but are mission critical to the shipper, carrier or 3PL who wants to conduct demanding analytical studies such as shipment optimization, site location planning, transportation bids and rerates, and many other data mining and analysis processes. Ultimately all of this leads to a better understanding of transportation costs and better pricing agreements between carriers and shippers.

NASSTRAC, in their reply, also voiced concerns that SMC's RateWare product line was the exclusive solution to a customer's ability to obtain CzarLite pricing. This is factually wrong and a review of SMC's catalog and website clearly indicates the difference between the product families. CzarLite has eight end user and API products that deliver only CzarLite base rates. In addition, SMC has developed CzarLite data interfaces to support nine unique software systems. There are many different ways that shippers, 3PLs and carriers can purchase and use CzarLite completely independent of other SMC products.

In contrast, the RateWare system delivers not only the CzarLite rates but it also provides (through a permission and approval process) the rates of all major LTL carriers, the private base rates of major shippers/3PLs and small package rates. Furthermore, RateWare supplies valuable transportation knowledge such as carrier points of service and transit times, mileages and programs for handling discounting, FAK configurations, surcharge calculations and tools for analysis, study and batch computing. To those who want more powerful computing and the availability of rate bases other than the basic CzarLite technology delivery or APIs, RateWare is certainly an option among many, but it is not a free option.

In all cases SMC believes it manages the process of making CzarLite available and affordable to shippers, carriers and 3PLs at the standards described by NASSTRAC. The hearsay nature of NASSTRAC's comments in relation to these matters causes great concern on SMC's part regarding the validity and completeness of the discussion. NASSTRAC's comments imply that SMC is either unaware of fundamental intellectual property rights and behavior or is purposely bending the rules. SMC has worked diligently and invested highly to create affordable end user programs and a suite of non-

proprietary technology APIs that provide affordable rating interfaces to all members of the software and transportation community. SMC's development of various CzarLite web-based interfaces was conducted with a goal of lowering the costs of their traditional installable APIs, and they are available to all segments of the transportation market.

Furthermore, SMC has a long and reputable history of working and consulting with transportation technology vendors to create highly intelligent and easy-to-use CzarLite APIs. It should be obvious that in its initiative to provide the LTL industry's base rate standard, it is in SMC's best interest to develop and implement CzarLite in as many of these systems as possible. SMC has agreements with over 30 software developers who use a variety of SMC interfaces and participate in the never ending drive to provide better, faster and more powerful CzarLite solutions. These relationships are very collaborative in nature; both SMC and these technology leaders must overcome problems and issues in order to advance the value and functionality of their respective products. SMC would not flourish in this competitive and sophisticated technology market if it employed the excessive or discriminatory practices that NASSTRAC has been "advised" of.

NASSTRAC's comparison of SMC to Microsoft is a strange distortion of reality at face value (Microsoft, every 14 minutes of every 24-hour day, 365 days a year, accomplishes SMC's annual revenue) and totally off the mark in context. In the TMS market referred to by NASSTRAC and estimated by ARC Advisory Group to be \$840 million annually, SMC's technology share is less than one half of one percent (.05%) — hardly a monopolistic position. Furthermore, NASSTRAC asserts that SMC could obtain a dominant position in a highly valuable suite of ratemaking materials. There is no evidence that this has or will happen. In fact, on the SMC-sponsored informational website, www.transportlink.com, there are 121 transportation software vendors listed and receiving free promotion from SMC. Of those software providers, 30 (25%) use SMC's CzarLite or RateWare ratemaking materials. It is hardly the character of a market monopoly to provide free promotion to those who use alternative solutions.

NASSTRAC can argue that Microsoft has a monopolistic position with its Windows operating system that dominates the PC marketplace and dictates programming and application standards. In that context SMC's role and actions are quite different. SMC delivers time sensitive data content such as CzarLite and other proprietary transportation information including individual carrier rates, miles, points of service and classification information to the marketplace. It delivers this content non-bundled in the widest variety of operating systems, programming languages and formats as economically possible, all while protecting the individual rights of the various content owners.

This distribution of data to bring intelligence to the language of LTL commerce has been one of SMC's primary missions since its inception and chartering in 1935. Today the media has been updated from tariff books to tariff software but the responsibility and requirement for accurate, timely and affordable data is still the same. SMC is successful at what it does, but it is operating within a market where there are numerous options, many of which are free (as has been noted) and others which are much more expensive than products provided by SMC (a fact which has been omitted from NASSTRAC's analysis). Carriers, shippers and 3PLs have many strategies and options regarding pricing content and there are a wide variety of transportation technology choices available to those who choose to implement the content.

NASSTRAC, in its comments to the STB, made specific mention of the needs of the transportation intermediaries, 3PLs and other third parties who provide a wide variety of services to their shippers. The growth and influence of this third party market is well recognized by SMC. In fact, as stated in its original filing, it is the widespread acceptance of CzarLite by this sophisticated transportation buying market that has solidified it as the preferred baseline. It is important to remember that, just like shippers, third parties who elect to license and pay for CzarLite do so after they have thoroughly evaluated the "free" base rates of carriers and the other for-pay options available in the marketplace. Today SMC licenses its CzarLite and rating technology to over 169 intermediaries who are by their very nature some of the most perceptive buyers of transportation pricing tools and technology. By choice they use these tools for various operational and analytical activities including LTL price analysis, freight audit

and payment, shipment optimization, and for the implementation of transportation bids on behalf of their shipper clients.

These third party providers participate in SMC programs and products in many ways. They are active in the rate hearing process, they participate as associate members in SMC and they make important contributions to the development of SMC data, technology and services with their thought leadership, requirement development and push for product innovation. They are recognized as some of the most astute and demanding users of SMC's CzarLite products and often participate with SMC in new product development through user groups, as beta users and early adopters. SMC has conducted several pilot programs and business incubator projects involving third parties; including four that are currently underway. SMC also supports the interests of this market segment by working with software developers who target their market and by participation and support of their trade association the Transportation Intermediaries Association (TIA). SMC is currently negotiating with 3PLs that are members of NASSTRAC and TIA to pilot the rollout of its Internet API delivery of CzarLite and the CzarLite BidSense product referred to in the NASSTRAC reply comments.

Third party providers and intermediaries also receive value from SMC through their participation in free SMC educational events and other specialized training seminars surrounding the specific topics of LTL pricing, transportation contracts and the use of SMC tools. SMC's commitment to support the 3PL industry is best evidenced through the free promotions and advertising of individual companies under the public portal www.transportlink.com, which is totally funded and managed by SMC to provide information to the transportation and software community. Under this portal, over 300 transportation intermediaries, 3PLs, consultants and others who desire to support NASSTRAC shippers are provided with free promotion and advertising opportunities.

In their filings, NASSTRAC and others have made specific assumptions and assertions about SMC's business based upon competitive hearsay and a theory of LTL pricing and technology markets that has no factual base other than SMC products are not free. The respondents' concerns about the use of CzarLite baseline rates between carriers and shippers are antiquated and apply only to the conventions of

a very different era of LTL pricing. Every day shippers from NASSTRAC and NITL, and indeed all segments of the nation's business, use CzarLite and rating technology from SMC to make intelligent decisions regarding their purchase and use of LTL transportation. Their decision to license CzarLite was made after careful consideration of a wide range of options including many that are free for use but do not meet their growing requirements of neutrality and technology.

As indicated in their submission supporting SMC's request for nationwide authority, shippers and 3PLs support CzarLite because of their confidence and respect for the way SMC manages their business and the quality of the products they present to the market. For many of these shippers and the intermediaries who represent them, the STB's role in the CzarLite ratemaking process is reassuring and supports their buying decision. However, this view of the world is clouded because they assume that the process of research, analysis and management of the CzarLite rates are equal across all bureau territories. With nationwide authority SMC would apply a uniform and comprehensive process to the creation of a nationwide baseline rate. The results would yield benefits and improve both the process by which shippers and their intermediaries negotiate with carriers and the technology required to support the decisions made.

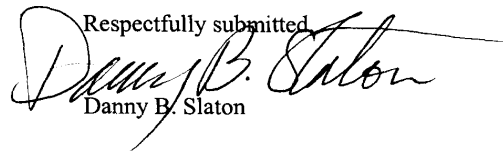
Respectfully submitted,

Danny B. Slaton

Exhibit 1 - Study of rate trending - SMC compared to an individual carrier

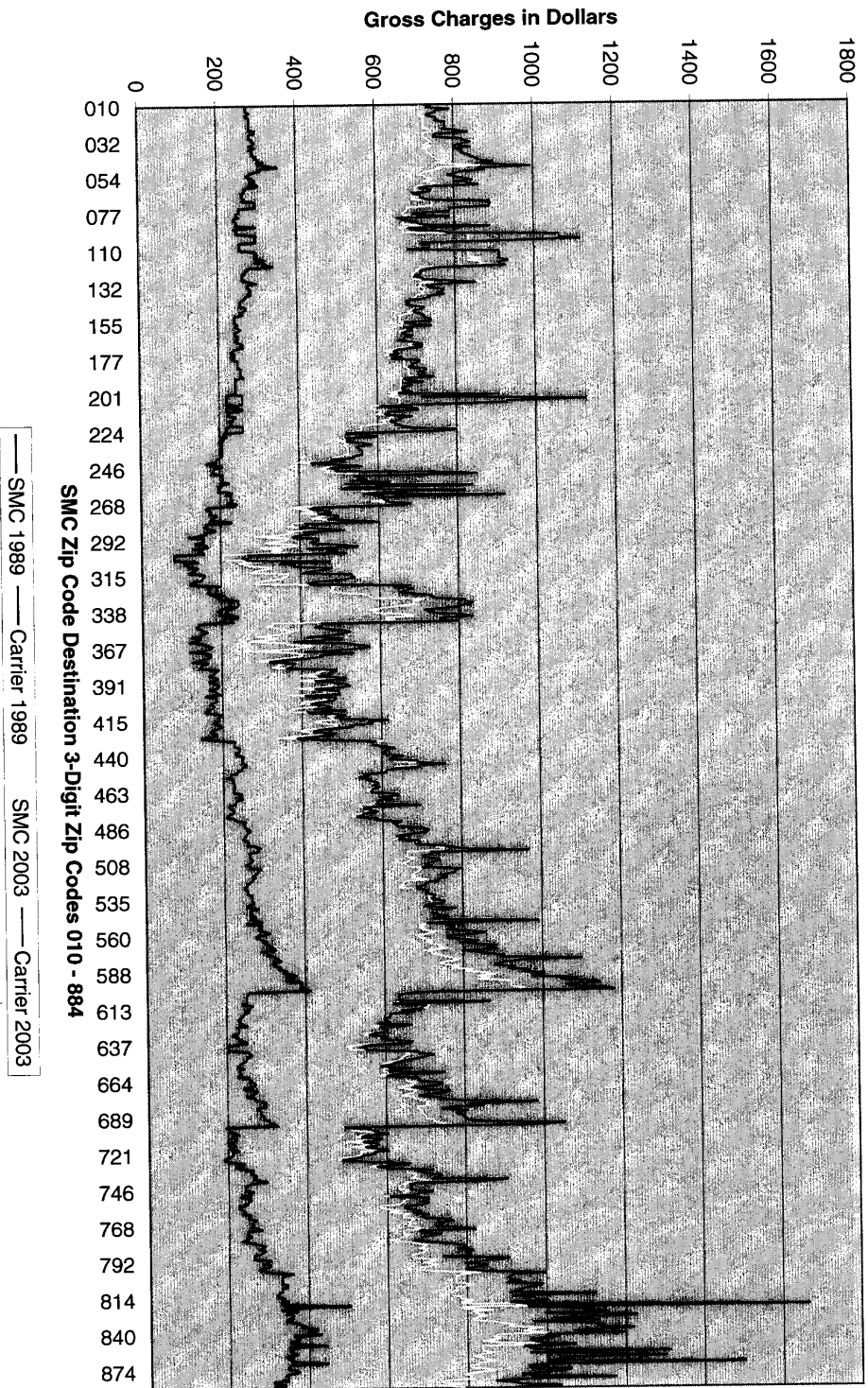
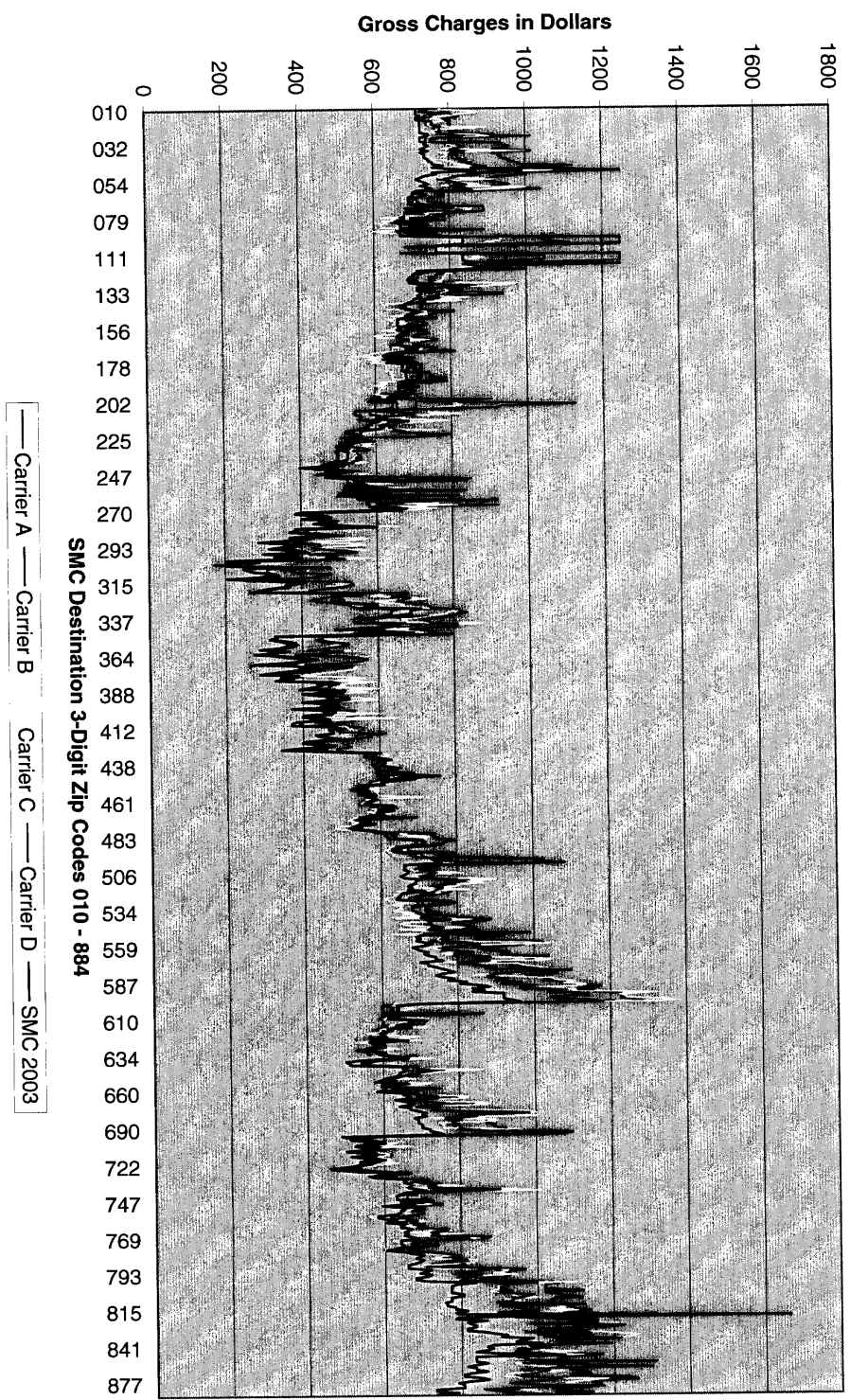


Exhibit 2 - SMC territory study of rate levels effective 2003
The graph demonstrates the rate variations between individual tariffs and the SMC baseline rates



**IV.
Rebuttal
Statement
of
Daniel M. Acker
Vice President, Operations**

IV.
Rebuttal Statement
of
Daniel M. Acker

My name is Daniel M. Acker. I am employed as the Vice President of Operations of Southern Motor Carriers Rate Conference, Inc. I am the same person that previously submitted a statement in support of this Application.

Non-Inclusion of Fuel Price Increases in General Rate Actions

I am the individual responsible for the construction and maintenance of the Carrier Cost Index (CCI). My responsibilities include the gathering of the data and carrier surveys, which identify the carrier labor, and non-labor costs, which comprise the CCI.

Contrary to the contention of NASSTRAC, no SMC GRI action since 1995 has increased fuel costs been included in the CCI. This is in recognition of the fact that SMC carriers recoup their increased fuel costs through a fuel surcharge, and inclusion of fuel in the CCI would give erroneous weight to the impact of increased fuel prices. The fact that the CCI does not include the increased price of fuel is noted by me during every General Rate Committee public meeting, and my exhibits as to carrier costs do not reflect the impact of increased fuel prices. The exclusion of fuel price increases is also noted in SMC's official information docket bulletin disclosing general rate increase actions.

Baseline Pricing

RMB and others have stated that there are a number of baseline rates available to the carriers and the shipping public. It is clear that they have chosen to ignore the reality of the transportation marketplace and the economic value of a baseline rate. The railroads have used a baseline for years, as have the U. S. Department of Defense and the U.S. General Services Administration.

Today, even with computers and electronic spreadsheets comparisons of Net Charges between carriers can be complex and time consuming. An example is in order:

A printer of schoolbooks in Meridian Mississippi wishes to ship schoolbooks to each of the over 1,000 independent school districts in Texas. The individual responsible for managing this transportation is charged with the responsibility of obtaining the lowest overall price for the delivery of these books. The individual creates a Request For Pricing (RFP) in which the type of freight is outlined, the National Motor Freight Classification rating of the books is identified, and the packaging of the books is described; the weight of each of the 1000 shipments is provided along with the origin point and the addresses of each of the 1000 destinations. Since the books are being shipped mid-summer, days of service for delivery is not critical or even a factor to be considered.

The RFP is released to the five carriers the shipper has previously used and received good service. Four of the five carriers reply and supply a rating disk along with the discounts each carrier is offering. Two carriers have their own independent baseline rate scales and two carriers utilize CzarLite®. As the individual analyzes the replies the analysis is further complicated, in that, both of the non-CzarLite carriers and both of the CzarLite carriers will allow the shipper to ship the books in truckload quantities to their distribution centers in Dallas, Texas and then be shipped to each school district from Dallas.

At this point the analyst must do the following if he wants to determine the lowest total charge for delivery of the books:

For each of the Non-CzarLite carriers:

Compute the actual charges for each of the 1,000 shipments for the two carriers with independent baseline rates to Dallas in truckload quantities and then to the individual destinations from Dallas. This results in manually rating, discounting and summarizing just over 2,000 individual shipments.

For the two carriers using CzarLite the analyst can calculate the total charges on 1,000 shipments without discounts. Then in two calculations determine the total charge of each carrier by application of the discount to the total. Save rounding, both totals will be accurate.

The net effect of this is that the analyst must calculate and summarize slightly over 2,000 charges for the Non-CzarLite carriers. Since the two CzarLite carriers are using a baseline of rates their gross charges will be the same and their individual discounts will determine the net charge for comparison to the other carriers. For the two CzarLite carriers the rate computations are reduced by 50% as compared to two carriers using independent rate levels.

Using a baseline of rates removes differences in the pricing and marketing approaches of the individual carrier from the analytical process reducing the analysis to a comparison of discounts. In this example multiple baselines have increased the amount of work needed to evaluate individual RFP's 200 percent over what it would take if a single baseline such as CzarLite® was used (2,000+ calculations vs. 1,000+).

This example highlights one of the reasons why a baseline of rates i.e. CzarLite is so well received by the shipping community. If the shipper specifies in their RFP that CzarLite is to be used as the baseline rate they can from the outset substantially reduce their expense in analyzing the carrier proposals, and in fact reduce their time and labor

enough to offset or possibly pay the licensing fees for CzarLite.

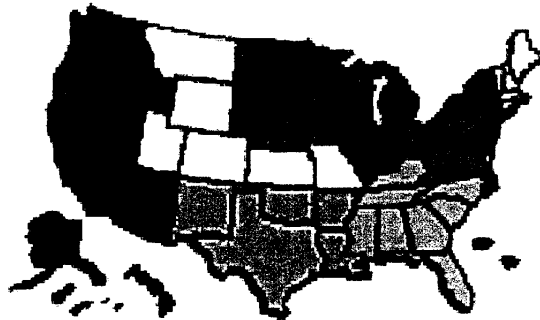
A uniform baseline of rates such as CzarLite can also provide an economic benefit for a carrier. Since some shippers do not ship their products to all points in the U.S. carriers can modify their discount levels to match their marketing and pricing goals in their service offerings to a shipper. The inherent savings in labor and rate maintenance to the carrier will reduce their costs in servicing their shipper accounts.

Regional Nature of Cost Levels in the United States

The ability of SMC to construct class rates in various regions has been questioned by RMB. SMC is fully cognizant that different costs levels prevail in each ratemaking region. Statement No. 2C1-75, published in 1976, by John A. Grady of the former Interstate Commerce Commission (ICC) details and explains the Regional or Territorial Motor Carrier Cost Publications for the thirteen (13) identifiable cost regions dating back to 1970. The engineering type studies performed by the Cost Finding Section of the ICC were evidence of the regional costs that were utilized over the decades to formulate the rates utilized by the rate bureaus. Regional differentials in prices are not unique to the motor carrier industry the as U.S. Department of Labor; Bureau of Labor Statistics identifies eight regions that have enough differences in their composition to warrant territorial identification.

New England (Boston, MA)
New York-New Jersey (New York, NY)
Mid-Atlantic (Philadelphia, PA)
Southeast (Atlanta, GA)

Midwest (Chicago, IL)
Southwest (Dallas, TX)
Mountain-Plains (Kansas City, MO)
Western (San Francisco, CA)



The U.S. Department of Labor; Bureau of Labor Statistics is not the only governmental agency that has identified the unique characteristics of a regional nature. The Energy Information Agency has identified the following five regions related to energy pricing.

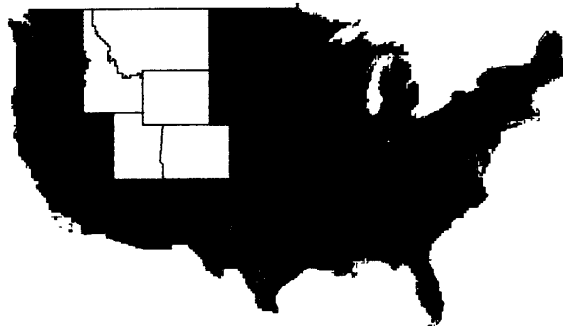
 REGION 1 (EAST COAST)

 REGION 2 (MIDWEST)

 REGION 3 (GULF COAST)

 REGION 5 (ROCKY MOUNTAINS)

 REGION 6 (WEST COAST)



The point to be made here is that regional differences in cost do exist and that these identifiable regional variances can and should be identified, quantified and reflected

in the rate levels in a baseline rate such as CzarLite. Through the CCI, and its National Traffic Study Database, SMC is uniquely qualified to give effect to these regional differences.

Any baseline of rates must be maintained. As costs, equipment, technology and demographics vary by region and shift over time the baseline must be adjusted to reflect these shifts to remain accurate and viable. Today a vacuum exists in those areas not served by SMC. That void is caused by the absence of nationwide ratemaking authority and the apparent lack of some of information as to what the other bureaus are doing with respect to those differing cost levels in their GRI's. The SMC General Rate Committee has seen this need and continually evaluates, adjusts and restructures the rates in Southern Territory, as they deem necessary to insure their integrity. The validity of this approach is intuitive, in that, a baseline is the meshing of the regional and territorial differences and commonalities. If it is not maintained properly it will fall into disuse and could be a detriment to both the shippers and carriers. For example; if a rate region is not increased in concert with other regions, the rate differentials will, over time, undermine the carrier's ability to offer an across the board discount on rates that transcend territories that are not properly maintained.

Many do not realize that the threat of this happening is very real. New England Motor Rate Bureau, Inc. is out of business. Middle Atlantic Conference, Inc. was able to publish rates covering the states vacated by New England, but they were merged with Eastern Central Motor Carriers Association, Inc. forming the successor EC-MAC Motor Carriers Service Association, Inc. I checked with the Commonwealth of Virginia, State Corporation Commission and found that EC-MAC Motor Carriers Service Association,

Inc. has not paid their corporate registration fees for 2003 or 2004, the last time these fees (\$25.00 per year) were current was April 23, 2002. This, in conjunction with EC-MAC's "me too" approach with Rocky Mountain, could create concern regarding the current and future status of EC-MAC.

Just as costs vary by region, rates also vary by region. SMC member carriers are subject to the same competitive pressures that confront other carriers throughout the United States. The expectation of most large shippers is an across the board discount on their freight. James E. Ridley, in his statement filed on April 22, 2004 provided an expansive exhibit comparing SMC rates to major non-SMC less-than-truckload carriers doing business within SMC's ratemaking territories. This exhibit covered 840 market comparisons involving 6,720 class rates of the SMC member carriers and seven non-member LTL carriers operating in the SMC ratemaking territories. The summary result of Mr. Ridley's exhibit was that in most cases SMC rates were lower than the market rates of the seven non-SMC carriers giving more credibility to the fact that carriers operating outside of the SMC territories experience expenses that are incrementally different, in this case higher, than experienced in southern territory. On page 16 of the RMB statement it states "In other words, if SMC's baseline rates are lower than some others maintained by individual carriers, then it is fair to assume that the discounts offered from those base rates are lower too." This comment exemplifies the RMB's lack of understanding of the competitive marketplace. If the baseline is lower it is because their costs are lower and they have a competitive advantage. Why would they discard that advantage by offering lower discounts, which would increase the charges to the shipper thus erasing the competitive advantage at hand?

To further refute the “lower discount” argument I have summarized the currently available 2004 Truth-in-Rates, Range of Discount information filed with the STB.

Bureau	Range of Discounts	
	From	To
SMC	20%	85%
Middlewest Motor Freight Bureau, Inc.	25%	85%
EC-MAC Motor Carriers Service Association	20%	76%
Rocky Mountain Tariff Bureau, Inc.	30%	76%

The Truth-in-Rates data definitively proves the inaccuracy of the RMB assumption that discounts offered on SMC’s base rates are lower than offered elsewhere.

RMB has stated “There is no reason to believe that SMC is uniquely able to correctly assess industry average carrier costs.” SMC has many of the tools to determine the revenue needs of the industry. It has pioneered the Carrier Cost Index, the National Traffic Data Base, carrier surveys, and carrier-related financial data. Unfortunately use of these data is limited to the Southern Ratemaking Territory. In 2003 the National Traffic Database, which is a nationwide summary of the carriers operating in the US, represented 20 billion dollars of transportation revenue from nearly 125 million shipments. SMC has substantial data on carriers operating in RMB, Middlewest Motor Freight Bureau, Inc. and EC-MAC Motor Carriers Service Association. Additionally SMC has experienced staff that can utilize this information in other ratemaking territories as it has in the Southern Ratemaking Territory

The United States Department of Transportation on their page 4 in footnote 3 unsuccessfully attempts to discredit Mr. Ridley’s statement that SMC’s rates are “considerably lower” than the rates of the individual motor carriers operating in the southern United States. They further try to highlight perceived differences in various expenses such as labor. Labor and labor related expenses such as health, welfare, and

pension comprise approximately two-thirds of the total expense of a carrier. While there are regional differences in driver wage levels, these are quickly being erased and, in fact, wage levels are being increased at rates well above other forms of employment. There are other reasons for this increase in driver wage levels. The Hours of Service Legislation that became effective last January revamped and reduced the hours a truckload driver could drive. Currently J.B. Hunt is advertising that qualified company drivers can start at 41 cents per mile, this reflects their recent 33% pay increase. (Last year 2,383 J.B. Hunt drivers earned \$50,000 or more.) This rate of increase is far above the Teamster April 1, 2003 pay increase of 3.17% and the April 1, 2004 pay increase of 1.98%.

The war on terrorism has also impacted the available pool of drivers. Expanded background checks are being used to screen driver applicants many of whom are being eliminated for reasons not previously considered important.

These two simultaneous situations are causing the pool of drivers available to the industry to shrink and the only way to attract qualified drivers is to further raise pay levels to attract trainees into the profession from other areas of the labor force.

The DOT's comments regarding union vs. non-union wages, transit times, and the long-haul nature of the firms in the study are of no relevance. Those non-SMC carriers are currently conducting business in the SMC ratemaking region, and the costs they incur are related to their operations.

Mr. Ridley's exhibit summarizes the fact that in most cases SMC class rates are "considerably lower" than market. What it does not reveal is that the class rates published in SMC tariffs additionally are subject to an automatic 20% discount which

was not incorporated into his presentation. When the automatic 20% discount is deducted from the “considerably lower” rates it is extremely difficult to envision that the factors identified in DOT’s footnote 3, would account for a 20% differential in rates.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel M. Acker", written in a cursive style.

Daniel M. Acker

V.
Argument of Counsel in
Response to Reply Statements

Reply Comments of the National Electrical Manufacturers Association,
Transportation & Logistics Committee and the National
Small Shipments Traffic Conference, Inc.

Both the National Electrical Manufacturers Association (NEMA), reportedly the largest trade association in the United States, through its Transportation and Logistics Committee, and the National Small Shipments Traffic Conference, Inc. (NASSTRAC), the members of which are recognized as extensive users of less-than-truckload motor carrier transportation services, urge the Surface Transportation Board to grant SMC's request for nationwide authority subject to certain conditions. SMC welcomes that support. Nevertheless, it is asserted by the NASSTRAC that the identified conditions express shipper concerns and are necessary to reduce the risk that nationwide collective ratemaking may not be in the public interest. (See, e.g., NASSTRAC Reply, pp. 24-25.) While the alleged concerns may exist on the part of some, it is submitted that the identified conditions are already addressed in the Interstate Commerce Act or are unwarranted.

There is no need for the STB to annex a three-year expiration period to a grant of nationwide collective ratemaking authority to SMC or any other motor carrier association seeking that authorization. Under 49 U.S.C. § 13703(c), it is provided that:

The Board may review an agreement approved under this section, on its own initiative or on request, and shall change the conditions of approval or terminate it when necessary to protect the public interest.

Further, under that provision the STB can end approval, prescribe the conditions on which approval is granted, or change those conditions. Thus, should any circumstances arise which adversely affects the public interest the agency, or any person, could immediately bring that matter to the STB's attention for resolution.

The STB has already indicated that a review of the recently renewed Section 5a agreements of the motor carrier ratemaking organizations will take place this year. Additionally, that periodic review, pursuant to the Motor Carrier Act of 1999, will take place during each succeeding five-year period. In light of the ability of the STB to review a Section 5a agreement at any time should the circumstances warrant, it would be unduly burdensome to subject SMC to an automatic review when just cause has not been shown, and would occur, in any event, during the five-year period ending in 2009.

The issue of the reasonableness of the undiscounted, collectively-established class rates is not properly before the STB in this proceeding, and no record exists here which would warrant or justify a finding that the full, undiscounted SMC class rates are presumptively unreasonable. (NASSTRAC Reply, pp. 21-22.) This issue was interjected by several shipper associations in the consolidated rate bureau proceeding in Section 5a Application No. 118 (Sub-No. 1), et al., EC-MAC Motor Carriers Service Association, Inc., Et Al. Importantly, in its Decision served on December 18, 1998 in that proceeding the STB acknowledged that:

In the past, the ICC would have been able to identify competitive rate levels itself by reviewing a variety of information at its disposal. As Congress sought to make the motor carrier industry more competitive, however, it reduced the Government's presence to a point where virtually no rate information is now available to us, and, therefore, public input would be necessary before we could determine how the class rate structure can be amended sufficiently so the bureau agreements could pass muster. (1998 Decision, p. 8.)

In its Decision served on February 11, 2000 in that same proceeding, the STB further clarified that the 1998 Decision did not find any class rate to be unreasonably high, and did not foreclose any bureau from demonstrating that the undiscounted bureau rates do, in fact, reflect the going rate levels in a competitive market. (2000 Decision, p. 7.)

In its subsequent Decision in STB Section 5a Application No. 118 (Sub-No. 2), et al., EC-MAC Motor Carriers Service Association, Inc., Et Al., the STB created the Truth-in-Rates Notice, not because the collectively-established class rates were found unreasonable, but so that “all shippers will be informed that the benchmark (or list) rates that motor carriers set collectively through rate bureaus are not necessarily the prevailing market rates and that there may be a wide range of discounted rates available.” (2001 Decision, p. 1.)

From their inception, collectively-established class rates have been subject to agency review as to their reasonableness, and, being based on industry average costs, were never intended to mirror market rates which are predicated on entirely different competitive and individual carrier costs. This record does not justify the finding requested that SMC’s class rates are presumptively unreasonable. No rational foundation exists for any such conclusion.

Nor does SMC believe that a grant of its nationwide collective ratemaking application should be conditioned on the requirement that SMC maintain the 20 percent discount its member motor carriers voluntarily initiated in 1999, and continue to apply. A similar request that the STB mandate an automatic discount from the class rates was made, and rejected by the agency, in the consolidated rate bureau proceeding. The STB concluded that setting a ceiling on the actual rate that a carrier could charge would constitute a rate prescription—a position the agency would not assume. (2001 Decision, p. 7.) Again, in its Decision served on March 27, 2003, the STB rejected the renewed request by NASSTRAC for such requirement reiterating that “imposing mandatory discounts could be viewed as, in effect, an impermissible prescription of rates.” (2003 Decision, p. 1.) Nothing in this record, as well, would warrant any such rate prescription by the STB.

NASSTRAC's disclaimer that it does not expect the STB to regulate SMC's pricing of CZAR-Lite, nevertheless, attempts to precisely achieve that result. Two preliminary points must be made. First, as indicated in the accompanying statement of Jack E. Middleton, SMC's President and CEO, the assertion of NASSTRAC's counsel that SMC has a "policy of preventing the use of CZAR-Lite with non-SMC rating programs maintained by others "is absolutely wrong. (NASSTRAC Reply, p. 22.) Second, of what relevance here is the proposed requirement that SMC "make public financial statements detailed enough to permit shippers, carriers, intermediaries, other bureaus and the Board to be aware of its revenues from CZAR-Lite and other sales of services." (NASSTRAC Reply, pp. 22-23.) Any such condition is an unnecessary and unjustifiable invasion of SMC's proprietary information, and is beyond the pale of any reasonable condition to be annexed to the ability of SMC's member motor carriers to collectively-establish a nationwide baseline of class rates covering the full scope of their transportation operations. Similarly, ill-conceived is any requirement that SMC be required to discuss with intermediaries pricing concerns, and to report the results of those discussions to the STB. Initially, neither the Transportation Intermediaries Association nor any individual intermediary has come forward and asserted that any problem exists as to SMC's pricing of its products. Moreover, it is highly unlikely that the STB has the interest in or would inquire into such issues, especially in the absence of a single complaint in that regard.

SMC welcomes shipper input into General Rate Increase proposals. As pointed out in Mr. Middleton's accompanying statement, notice is sent out to some 5,000 potentially interested persons, mostly shippers, of a proposal and the public hearing date. That is done at a minimum of 30-days prior to the public meeting. Also, at the meeting, each person attending is provided copies of the same information provided to the motor

carrier members of the General Rate Committee so that they can understand and review the information which will be relied upon by the carriers in making their decision.

It is disappointing that NASSTRAC concedes that it has not researched “in detail the makeup and impact of the CCI [Carrier Cost Index].” (NASSTRAC Reply, p. 24.) That methodology was used in establishing the SMC 1999 General Rate Increase, has been utilized in every rate action by SMC since that time, and has been explained in White Papers distributed by SMC to some 2,500 persons, including counsel for NASSTRAC, in relation to each General Rate Increase action. Additionally, since 2000, Daniel M. Acker, SMC’s Vice President of Operations, has explained in detail the composition of the CCI in statements filed on behalf of SMC in the rate bureau proceedings, and most recently, in great detail, in his April 21, 2004 statement in this proceeding. Moreover, that information has been presented to the STB. The comment that the CCI may have to change is entirely gratuitous and, admittedly, is not made by NASSTRAC with a true understanding of the process.

Again, the concern of NASSTRAC that shippers may be paying rate increases based, in part, on fuel cost increases, and paying carrier fuel surcharges, has no application to SMC. (NASSTRAC Reply, p. 24.) As has been indicated time and again by SMC in its statements explaining GRIs and at the public meetings, increased fuel costs are not included in the CCI because of the fuel surcharge provisions. Therefore, that concern is misplaced.

SMC does not object to the annexing of reasonable conditions to an exercise of nationwide collective ratemaking activities. However, while the foregoing proposed conditions may be well-intentioned they are either unnecessary or go too far and are not reasonable. If the STB wishes to require SMC to formalize the methods by which it provides Notice of its public meetings and provides information to participants, it is more

than willing to do so. Also, it would again provide information on its Carrier Cost Index and the National Traffic Database and how that data impacts a GRI. Because the SMC carrier members decide what action is to be taken on a proposal at the meeting, it is not possible to determine prior to a meeting what the outcome of that deliberation will be. Therefore, SMC cannot advise interested persons in advance of any action taken by the General Rate Committee beyond the original proposal.

Lastly, SMC is obliged to correct a misstatement by NASSTRAC regarding its purported protest of SMC's 1999 General Rate Increase. (NASSTRAC Reply, p. 14.) While NASSTRAC and others protested the GRIs of other bureaus, SMC's GRI was not protested and became effective as scheduled. Further, the 20 percent discount voluntarily adopted by SMC's member carriers had nothing to do with the lower level of class rates in SMC's territory as NASSTRAC asserts (NASSTRAC Reply, p. 14), but was based on the 21.2 to 73.3 percent discount range that was offered by the member carriers on class rated traffic. (See, e.g., April 11, 2000 Statement of Daniel M. Acker in Section 5a Application No. 118 (Sub-No. 2), p. 12.)

Reply Comments of
The National Industrial Transportation League
In Opposition to the Application

The National Industrial Transportation League's (NITL) categorical and institutional opposition to collective ratemaking, in general, and specifically to SMC's expansion of its collective ratemaking activities to correspond with the operational needs of its member carriers, obviously is not shared by the shipper and carrier members of NITL who have submitted statements supporting SMC's application. Instead of contesting that support, NITL conveniently ignores that significant input, and basically restates a decades-old position that is not relevant in today's transportation marketplace.

The summary of NITL's position presented in the opening pages of its comments underscores the serious misconceptions upon which its opposition is predicated.

NITL's assessment of SMC's application as anticompetitive conduct whereby a group of motor carriers seek to engage in collective rate setting entirely misses the mark. With the proliferation of rate offers by carriers as a result of lessened regulation and the termination of rate filings, the shipper community and carriers were confronted with serious pricing evaluation and negotiation problems because of the complexities which existed in analyzing carrier rates. As indicated in its supporting statement, Masco Corporation, a NITL shipper member, recognizing the need to rationalize those complex price comparisons and rate negotiations, approached Central and Southern Motor Freight Bureau, which subsequently merged with SMC, and requested that motor carrier ratemaking association develop "a user friendly pricing system based on bureau class rates applicable throughout the United States." Thus, CZAR-Lite was developed, and through that pricing mechanism the substantial price comparison and negotiation problems that had been encountered with the multiple carrier rate bases applicable in the marketplace were greatly overcome. (Masco Statement, p. 1.) The use of a class rate baseline was conceived by a substantial shipper as a necessary pricing mechanism to resolve the rate confusion which was created by the diverse rate offerings extant in the market.

SMC is not seeking the "nationwide collective rate setting" NITL challenges. Rather, it seeks the authority to establish a pricing mechanism for its member carriers based on their nationwide transportation operations and reflecting their costs and revenue needs. Presently, that baseline of class rates incorporates the class rates of other regional carriers. Masco Corporation believes it makes sense for SMC's carriers to establish class rates for their own transportation services, and attests to the fairness and reasonableness

of the class rates those carriers have established in the Southern Territory. Moreover, Masco Corporation is confident about SMC's costing expertise, and believes that with nationwide collective ratemaking authority SMC "would establish a fair, reasonable and competitive baseline of class rates which would benefit its member motor carriers and shippers moving products throughout the United States." (Masco Statement, p. 2.)

The key is recognizing that in today's market SMC does not collectively set rates, but is establishing a baseline reasonable and suitable for facilitating shipper and carrier pricing negotiations, i.e. so-called market rates.

NITL's assertion that granting SMC's application would result in the establishment of class rates "well above market levels and that are likely to be charged to some shippers" lacks any foundation. As James E. Ridley, SMC's Senior Data Technician, has demonstrated by the comparison of 6,720 class rates of SMC member carriers in 840 markets with seven, non-member LTL carriers conducting business in SMC's ratemaking territories, 67 percent of the individual non-member class rates are higher than SMC's, and that SMC's class rates were among the three lowest levels in 726 of the market comparisons. (Ridley Opening Statement, pp. 2-3.) The reasonableness of those class rate levels is affirmed by Masco Corporation, and the expansion of that ratemaking activity is also supported by NITL shipper and transportation intermediary members Continental Traffic Service, Inc., Emerson Electric Co., Hewlett Packard, Gambro, and Trinity Transport, Inc. Contrary to NITL's assertion, actual member users of SMC's class rates in their pricing negotiations do not agree with the assessment that SMC creates class rates are above market levels.

In alleging that some shippers likely would be charged class rates well above market levels, NITL seemingly has forgotten that SMC class rates apply a 20 percent minimum discount for any shipper. SMC does agree with NITL that "to the greatest

extent possible, pricing of motor carrier services should be established through competition in the marketplace,” and that is precisely what a fair and reasonable baseline of class rates enables the parties to the transportation arrangement to do.

It is disingenuous for NITL to allege that SMC relies on evidence of shipper support introduced in 1997, and to fail to acknowledge the fact that there is current support for SMC’s application from NITL shipper, transportation intermediary and carrier members. (NITL Reply, p. 2.) Moreover, comparison of that earlier support with the recent NITL member support, and that of other members of the transportation community introduced here, firmly establishes that now, as then, the transportation community needs a responsive pricing mechanism to facilitate the negotiation and assessment of motor carrier rates.

The characterization of SMC’s application as an attempt to benefit itself rather than the public at large misses the point. (NITL Reply, p. 2.) SMC is seeking collective ratemaking authority that would benefit its member motor carriers by enabling them to construct a class rate baseline corresponding to their broadened operations, reflecting their costs and revenue needs rather than those of virtually unknown and unnamed carriers applying unrevealed costing methodologies in other regions. As indicated above by NITL members, SMC’s costing expertise has resulted in fair and reasonable class rates. Therein lies the benefit to the public; namely, accessibility to a rational pricing mechanism established by SMC’s member carriers upon which fair and reasonable motor carrier rates can be identified and/or negotiated.

The tailoring of the SMC class rates to the actual operations of the member carriers nationwide is the principal benefit to be gained by this application, and not, as NITL asserts, betterment of the commercial interests of SMC. As NITL recognizes CZAR-Lite, which is merely the compilation of class rates beyond Southern Territory,

has grown over the years. But, that has no bearing on how that product can be improved by applying SMC's Carrier Cost Index and the information available in its National Traffic Database in establishing class rates for its member carriers operating in those other territories.

True, as NITL contends, CZAR-Lite has continued even though certain bureaus have ceased operation. However, that ability exists because there was the overlapping of territories as to those bureaus. For example, EC-MAC is authorized to collectively establish class rates in the territory that was essentially coextensive with The New England Motor Rate Bureau, Inc. What happens if EC-MAC ceases operation? There is no other bureau authorized to conduct ratemaking activities in that region. Yet, the failure of other bureaus is not the principal, albeit an important, reason why SMC is seeking nationwide authority. The ability of its member carriers to establish their own baseline of class rates is the driving force behind this application—an effort well supported by the transportation community, which also benefits from a competitive and fair nationwide class rate baseline.

Several parties to this proceeding, including NITL, have misstated the reasons why SMC petitioned the STB to reopen this proceeding and grant its application based on the then-existing record. Moreover, none acknowledge that SMC itself alternatively requested that the matter be set for further hearing and that a procedural order for the submission of additional evidence be issued. (See SMC's November 5, 2003 Petition.) SMC never contended, as is suggested, that the removal of the former Congressional prohibition against the STB granting a nationwide collective ratemaking agreement was a mandate to the STB to grant SMC's application. Rather, SMC, which was instrumental in pursuing the removal of that prohibition, only sought the restoration to the agency of its authority to assess the merits of SMC's application. What SMC's petition did contend

was that the change in the law, in accord with 49 C.F.R. §§ 1115.3(c) and (d) and 1115.4, constituted grounds to reopen the administratively final proceeding on SMC's application. Moreover, it was pointed out that said change in the law rescinded the legislative restriction on the STB's authority noted in the consolidated rate bureau proceeding which directed it not to implement "the intention expressed in the 1998 Decision to allow rate bureaus to operate on a nationwide basis." (See 2000 Decision, pp. 4-5, and fn.5.)

Furthermore, in its Decision served on December 18, 1998, the STB concluded that:

[W]e recognize the increasingly globalized nature of the transportation system and the anachronistic nature of restrictions limiting bureaus to geographic territories. In our view, provided the bureaus reduce their class rate scales appropriately, they should be permitted to lift such territorial restrictions. Absent a clear expression from Congress to the contrary, we intend to allow bureaus whose agreements are approved after December 31, 1999 to lift the territorial restrictions on the scope of their agreements. (Decision, pp. 9-10.)

In addition to the repeal of the Congressional prohibition, the STB, as indicated above, departed from the position that the class rates had to be rolled back, and adopted instead the Truth-in-Rates Notice. In addition to voluntarily implementing a minimum 20 percent discount for all shippers, which continues in effect, SMC fully implemented the agency's Truth-in-Rates requirement, and its Section 5a Agreement was approved in the STB's Decision served on October 16, 2003. Given these facts, and the unprecedented support its application had received from all segments of the transportation community, SMC believed that requesting the STB to act in accord with its findings in the 1998 Decision was not inappropriate. Nevertheless, it suggested and has complied with the agency's direction to submit additional evidence in the reopened proceeding. At no point

has SMC attempted to “back door” its application, and it has never contended that Congress directed the STB to grant SMC nationwide authority.

NITL’s final point attempts to create a Catch 22 scenario. On the one hand it argues that granting SMC’s application is unnecessary because other regional bureaus exist and create class rates in their respective regions. Then, acknowledging the questionable status of certain other rate bureaus, NITL contends a greater harm could be created by placing SMC in a position to “virtually control the establishment of all LTL class rates.” (NITL Reply, pp. 2-3.) The reasons why SMC’s carriers should be able to establish their own class rates coextensive with their nationwide transportation operations will not be repeated. But, it must be pointed out that the alternative postulated by NITL defies reality. Recognizing the questionable status of certain other rate bureaus, NITL should be concerned that the class rate pricing mechanism so heavily relied upon and supported by a number of its own members is in jeopardy, particularly if other bureaus cease operation. Also, that contention fails to recognize that other bureaus have filed nationwide collective ratemaking applications which, in all likelihood, will be pursued if SMC is successful in its effort. There is no reason to postulate that only SMC would possess nationwide authority, and, in any event, that authority would only relate to the class rates of its member motor carriers, and not the major competitors that operate outside of motor carrier ratemaking associations.

Further, it must be recognized that there are rate bureaus which already have nationwide collective ratemaking authority for their member motor carriers, i.e. various specialized carriers, and even though they are the only rate bureau through which their carriers establish their rates, the dire consequences alluded to by NITL have not occurred. There is no reason to assume if only a single LTL carrier bureau survived that the public would be harmed. Indeed, section 13701(a)(1)(C) of 49 U.S.C. requires that rates established

under a collective ratemaking agreement must be reasonable. Additionally, under section 13703(c) of 49 U.S.C., the STB has the authority to revoke any agreement should the collective ratemaking activities conducted not be in the public interest. NITL's concerns are without foundation.

Reply Comments of the
U.S. Department of Transportation

The U.S. Department of Transportation's (DOT) "most fundamental reason" for its opposition to SMC's application reveals its lack of understanding of today's pricing of motor carrier services and the role of motor carrier ratemaking associations. DOT erroneously states that "the core function of rate bureaus remains an inherently anticompetitive act: the setting of prices for horizontal competitors." (DOT Reply, p. 1.) As the record in the consolidated rate bureau proceedings, and in this proceeding, establish that assessment is incorrect. Motor carrier ratemaking organizations operating under Section 5a agreements approved by the STB establish baseline class rates which are the pricing mechanism through which shippers and carriers identify and negotiate competitive rates. That is a pricing process supported by the transportation community because it has facilitated motor carrier pricing practices which had become too complex and difficult to manage due to the proliferation of individual carrier prices and baselines. Motor carrier ratemaking associations do not set prices as DOT erroneously believes.

While DOT certainly has a right to express its views in this proceeding, inasmuch as that Department has no role in the regulation of motor carrier rates or determinations of the public interest as pertains to motor carrier collective ratemaking agreements, its categorical conclusions about motor carrier pricing practices and SMC's ratemaking activities must be challenged. Permeating DOT's analysis of SMC's application is its mistaken concept that collective ratemaking activities produce "above-market rates."

(DOT Reply, p. 3.) Shippers and transportation intermediaries negotiating rates with motor carriers using class rate baselines disagree with that assessment, and find both the SMC baseline and the rates negotiated with that pricing mechanism to be fair, reasonable and competitive. (See, e.g., SMC's Initial Statement, Support letters of Cass Information Systems, Inc.; Masco Corporation; and Trinity Transport, Inc.) As NASSTRAC concedes today's trucking industry is characterized by intense competition and generally reasonable rates. (NASSTRAC Reply, p.2.) DOT is simply wrong in arguing that under STB authorized collective ratemaking, member carriers are agreeing upon rates. (DOT Reply, pp. 3-4.)

DOT's efforts to criticize SMC's class rate baseline comparisons set forth in the statement of James Ridley is flawed. (DOT Reply, fn. 3.) The study compares the class rate baseline established by SMC's member carriers with those of major, LTL non-member SMC carriers independently publishing class rate baselines applicable in Southern Territory and which compete with SMC carriers. That comparison was not intended or represented to reflect "the rates actually charged to and paid by shippers." It was not designed to constitute a "marketplace comparison," and the factors which DOT alleges should be included in that type study have no relevance here. SMC sought to and did establish that the lower-cost operations conducted by its member carriers are reflected in the class rate baseline they have established under their approved collective ratemaking procedures.

If the principal and most important concern of DOT in this proceeding is the continuation of discounting, that concern is without foundation. (DOT Reply, p. 5.) Discounting has been the basis for the negotiation of motor carrier rates for well over two decades, and is the method utilized to determine motor carrier pricing irrespective of whether a collectively-made or individually determined baseline of class rates is the

pricing mechanism utilized. Much has been quoted about the purportedly “artificially high class rates” established by the bureaus, but it is pointed out that SMC’s class rate comparison shows quite persuasively that the collective process has resulted in class rates that compare favorably with and overall are lower than those established individually. Other important differences are that individually determined class rate baselines are not subject to STB regulation whereas collectively-made class rate baselines are required to be reasonable. So too, collectively-made class rates must be adjusted based on industry average carrier costs and, by law, cannot involve discussions of individual markets or particular single-line rates. (49 U.S.C. § 13703(a)(1)(G).)

As discussed above, nationwide rate bureaus are not unknown to motor carrier transportation, and have existed for many years for a variety of specialized carriers. If DOT’s concerns were legitimate, they certainly would have surfaced in connection with the ratemaking activities of those organizations. The failure to show any such problems, and the fact that the STB recently renewed those collective ratemaking activities, undercuts DOT’s speculations regarding the purported ill-effects which might result should SMC, or any other bureau, be granted nationwide collective ratemaking authority for its member carriers. Significantly, it must be recognized that there are carriers which do not participate in rate bureaus and have individually determined class rate baselines. If shippers become dissatisfied with collectively-established class rates, they could require the use of those other existing baselines for rate offers or pricing purposes. It is no secret that some shippers have established their own baselines, including the Department of Defense and General Services Administration, or insist that a particular carrier baseline be used as the acceptable pricing mechanism.

DOT has shown no bona fide threat to marketplace pricing by collective ratemaking (DOT Reply, p. 6), and the record in the reopened and prior proceeding

establish that shippers and transportation intermediaries, the actual users of transportation services, do not agree with DOT's assessment of collective ratemaking activities.

Congress has not seen fit to agree with DOT's position against collective ratemaking in the motor carrier industry, and in each of the numerous legislative enactments which have involved the trucking industry has preserved the ability of motor carriers to collectively establish class rates with antitrust immunity under agreements approved by the STB. Recently, it removed the prohibition against the STB granting nationwide applications to motor carrier ratemaking organizations, and restored that long-held authority to the agency.

DOT may be unaware that motor carrier ratemaking associations, under the truth-in-rates requirement annually must report the range of discounts applied by their member carriers to the STB. Moreover, a requirement that a weighted average of discounts be reported was assessed by the STB and was rejected as being impractical and virtually impossible to calculate because of "the thousands of commodities in hundreds of thousands of traffic lanes" which would be involved. (2001 Decision, p. 8.) SMC would have no problem reporting periodically on its membership as suggested by DOT, and has done so in this and the other rate bureau proceedings recently completed. SMC is not clear by DOT's reference to "their numbers" which it is suggested also be reported. (DOT Reply, p. 7) As previously expressed, SMC would have no objection to complying with any reasonable conditions the STB concludes should be required in conjunction with a grant of nationwide authority.

Reply of Rocky Mountain Tariff Bureau, Inc.
Joined by EC-MAC Motor Carriers Services Association, Inc.

Preliminarily, it is noted that while Rocky Mountain Tariff Bureau, Inc. (RMB), and EC-MAC Motor Carrier Services Association, Inc. by adoption of the RMB

pleading, continue to oppose the granting of nationwide collective ratemaking, the vast majority of motor carrier ratemaking organizations which have had their Section 5a agreements renewed by the STB do not. Noticeably, Niagara Frontier Tariff Bureau, Inc., which originally was party to RMB's and EC-MAC's opposition, no longer participates in that action. The Middlewest Motor Freight Bureau, Inc.; Machinery Haulers Association, Inc.; Nationwide Bulk Trucking Association, Inc.; and the Western Motor Tariff Bureau, Inc. have not opposed SMC's application, and Pacific Inland Tariff Bureau, Inc. (PIN) has submitted a statement in support of SMC. As PIN indicates, SMC does not oppose PIN's nationwide application or that of any of the other motor carrier ratemaking associations which have made similar filings with the STB.

In its Initial Statement, SMC challenged RMB and EC-MAC to come forward with information advising the STB of the structure and purpose of their organization. Who are their member carriers? What methodology do they use to propose and support general rate increase actions? How is data collected and from whom? What rate expertise exists within those organizations? What products or services do they provide to the transportation community? When was the last public docket meeting held to discuss a general rate proposal? What information is provided to the STB or the public in explanation of a general rate increase action? The failure of RMB and EC-MAC to respond to any of those inquiries speaks volumes.

SMC conducts its collective ratemaking activities with total transparency. Its efforts to inform the public about the basis for a general rate action is unparalleled, and NASSTRAC acknowledges that SMC's website is more useful and informative than those of other rate bureaus. (See NASSTRAC Reply, p. 10.) Another fact confirming SMC's responsiveness to the transportation industry is the growth of its associate member program which consists of 937 shippers and transportation intermediaries. (See

Initial Statement of Danny B. Slaton, SMC's Vice President of Sales & Marketing.)

Comparison of that list with the 191 shippers and transportation intermediaries, who originally filed statements in support of SMC's application, shows the continued confidence of the transportation community in SMC. What has or can RMB and EC-MAC point to as affirmation of their services to the transportation community?

Several of the "solutions" offered by RMB to meet the needs of SMC member motor carriers located within and without the Southern Territory require comment. It asserts that those carriers are free to join other bureaus or to rely on CZAR-Lite. (RMB Reply, pp. 1-2.) Regarding other bureaus, especially RMB and EC-MAC, SMC member carriers do not believe those organizations have the capability of meeting their pricing needs. Kenneth J. Burroughs, Jr., Overnite Transportation Company's Vice President of Pricing and Customer Service and a member of SMC's Board of Directors, previously served on the RMB and Eastern Central Boards. He is thoroughly familiar with the services offered to the transportation community by SMC and that organization's pricing and costing expertise. His company, because of that expertise and service, has chosen to belong to SMC and to no other bureau. Mr. Burroughs identifies the present, confining regional rate bureau structure as the key impediment to the ability of SMC to meet all his company's pricing needs. (See SMC's Initial Statement.) Paul J. Dugent, Vice President of Pricing and Traffic for Estes Express Lines, stated that in the past his company belonged to a number of rate bureaus in addition to SMC. However, "because those organizations didn't meet our pricing needs, my company's participation is now limited to SMC." Kevin J. Brink, Vice President—Business Development for Norrenberns Truck Service also participates in RMB and another bureau but indicates that "SMC is the only bureau which provides my company with the full range of services we need to meet our customer's pricing needs." Watkins Motor Lines, Inc., an SMC member carrier,

at one time belonged to EC-MAC and RMB. However, according to Paul E. Weaver, Watkins Motor Lines Vice President Pricing and Traffic, his company “terminated that membership because my Company did not foresee those organizations offering the pricing services needed to compete in today’s transportation marketplace.” Richard F. Keeler, Old Dominion Freight Lines’ Vice President, Pricing and Strategic Development, noted that other bureaus “do not have the ability to create the pricing products essential to assisting carriers to compete in the marketplace.” Based on Mr. Keeler’s participation in SMC’s General Rate Committee and its Board of Directors, he believes that SMC does possess the expertise and resources to construct a nationwide baseline of rates. Edward L. Guffey, Wilson Trucking Corporation’s Vice President—Traffic expressed confidence in the carrier cost index used by SMC to construct general rate actions and was unaware of the methodology used by other bureaus. Why should those or any other SMC member carriers be forced to join or utilize bureaus in which they have no confidence to perform the vital pricing functions necessary to compete in today’s transportation market.

Nor does CZAR-Lite offer the solution RMB suggests it does. As SMC’s carrier members have indicated the problem presented by CZAR-Lite is that the class rate scales beyond SMC’s territory are not tailored to their costs and revenue needs as are those within SMC’s ratemaking territory. Rather, they are required to rely on unknown costing methodologies and unidentified carrier data to construct those rates. There is no justifiable reason why carriers and shippers in using CZAR-Lite should not have available as a pricing mechanism class rates reflecting the economies and efficiencies, as well as the costs and revenue needs, of the actual carrier parties to the negotiation. CZAR-Lite could be made a more responsive tool for SMC’s carriers if SMC had nationwide collective ratemaking authority.

RMB rests on a series of self-serving allegations hoping to convince the STB to deny SMC's application in favor of the status quo. RMB may be describing its own role as "limited" in constructing joint rates and general rate adjustments to baseline rates (RMB Reply, p. 4), but that is not descriptive of the breadth of services provided by SMC to its member carries and the shipping community or the pricing needs of its member carriers. Perhaps RMB's unidentified, small regional carriers don't require expanded ratemaking authority, but SMC has demonstrated that its member carriers require more, and that request is supported by their shipper customers. Of course RMB is satisfied with the status quo. It apparently has no greater need to serve its members' pricing needs, and, in its tariff D-83, already has nationwide authority to establish divisions, i.e. rates and charges on a nationwide basis without any competition.

Issue is taken with RMB's contradictory assertion regarding its nationwide division sheet. The word game played in attempting to distinguish the establishment of divisions on a nationwide basis and the publication of divisions between all points goes too far. RMB's D-83 tariff applies between all points in the United States. RMB is incorrect and lacks candor in attempting to create the impression that SMC's ProRater 2000 is a nationwide division sheet. ProRater merely provides a mechanism by which divisions of revenues between interlining carriers can be computed. It is not the product of collective activity and is tailored for individual carriers. Unlike RMB's D-83, ProRater does not contain collectively-made rates and charges. (See RMB Reply, p. 21, fn. 15.) RMB is the only rate bureau having nationwide authority to construct that division sheet, and, to avoid competition, it obviously wants the STB to maintain the status quo.

RMB's allegation that SMC "has unsuccessfully sought expanded antitrust immunity for at least the past ten years" is misleading. (RMB Reply, p. 3.) Apparently,

RMB has forgotten, or chooses to ignore, the STB's 1998 Decision announcing its intent to allow rate bureaus whose agreements were approved to expand their operations to a nationwide basis. (See, also, February 11, 2000 Decision, p. 2, fn. 3.) That intent could not be implemented because RMB and EC-MAC, through stealth legislation, caused the STB's authority to grant such applications to be terminated. Also lacking in candor is RMB's description of the content of SMC's November 5, 2003 petition which the STB granted in reopening this proceeding. RMB's recounting of SMC's basis for seeking the reopening of this proceeding is incorrect and time will not be devoted here to correcting those flagrant misstatements. It suffices to note that the STB obviously saw the merits of that pleading as evidenced by this proceeding.

It is ironic that RMB, an organization which could not function without antitrust immunity, possesses expansive collective ratemaking authority radically from the 11 Western States to the United States and is the only rate bureau possessing nationwide authority to construct motor carrier divisions, desperately resorts to the argument that granting antitrust immunity to SMC to serve its members demonstrated pricing needs would threaten the "bedrock of the competitive economy." (RMB Reply, p. 5.) It must also be pointed out that, unlike RMB, which offered no evidence corroborating its arguments, SMC presented substantial testimony from shippers and shipper intermediaries attesting to their belief that granting SMC nationwide pricing authority for its carrier members would enhance the widely-relied upon pricing mechanism by which competitive motor carrier rates are negotiated.

In a contrived effort to have the STB conclude that LTL carriers only need regional collective ratemaking authority, RMB states, that "relatively few carries operate within several regions, and many from this small group of carriers either belong to more than one rate bureau or opted out of the collective ratemaking system years ago." (RMB

Reply, pp. 5-7.) Of course, RMB neither identifies its member carriers nor presents evidence that its unfounded allegations are correct even as to its own members. Assuming, arguendo, those contentions are accurate regarding RMB, they are demonstrated on this record not to be true as to SMC's member carriers.

Plainly, as shown by the member carrier statements submitted with SMC's Initial Statement, a substantial number of its members are not the small regional carriers RMB hypothesizes comprise the LTL carrier base. (See, e.g., Overnite Transportation Company, \$1,475,000,000 revenue; Watkins Motor Lines, Inc., over \$865 million; Estes Express Lines, about \$865 million; Averitt Express, over \$600 million; Old Dominion Freight Line, about \$293 million; Southeastern Freight Lines, Inc., over \$483 million; Wilson Trucking Corporation, approximately \$122 million; and AAA Cooper Transportation, in excess of \$408 million.) Those carriers directly and/or through interline arrangements provide service throughout the United States—a transportation service required to meet their customers' expanded market needs. Even SMC's smaller carrier members do not fall within the narrow and incorrect profile RMB seeks to paint. Those which provide direct service to points within Southern Territory must, nonetheless, provide interline service to points throughout the United States if they are to retain their customers' traffic. The fact is that what are deemed small carriers serve a significant number of shippers and must have accessible connecting line carriers to provide outbound and inbound service to customers for shipments originating at or destined to points beyond their direct service area. (See, e.g., Shippers Express, Inc., 1,500 to 2,000 customers, 15 to 16 interline arrangements; Terminal Trucking co., 24,000 customer accounts, 4 interchange arrangements; Benton Express, Inc., 2,200 active shippers, 5 interline arrangements; and Hec Transportation Logistics, Hazard Express, Inc., about 500 active customers, 27 active interlines.)

The contention that motor carriers operating beyond their base territories can join other rate bureaus is unavailing. As indicated above, a number of SMC's member carriers have indicated that they have belonged to other rate bureaus, specifically RMB and EC-MAC, and left those organizations because they could not meet their pricing needs or provide the services required in today's transportation marketplace.

RMB argues that "the regional system allows smaller carriers that compose the bulk of rate bureau membership a more active role in the process than would be the case in the event that the small number of national carriers were to rejoin the rate bureaus and dominate the process." (RMB Reply, p. 7.) It is interesting that RMB, and by adoption EC-MAC, would resort to the argument long ago urged by the U.S. Department of Justice to terminate antitrust immunity and end collective ratemaking for any bureau, including RMB and EC-MAC. Nevertheless, just as that argument proved unconvincing then, the same is true here. It must be repeated that although RMB and EC-MAC attempt to cloak themselves as the advocates for small, regional carriers, neither has identified its membership. As to SMC, it is clear that its carrier membership consists of a broad mix of truly national carriers and small carriers that do provide transportation services through interline arrangements outside of Southern Territory. Not a single fact gives any credibility to RMB's contention that the "national carriers," which already belong to SMC, dominate the process. Each member carrier has one vote. Moreover, the concept of a "national carrier," as that argument was advanced decades ago, referenced the regulated transportation environment which existed when relatively few carriers had substantially nationwide operating authority, had great control over freight moving into and out of the various regions, and selected the carriers with which joint-line services would be performed. Today, virtually all carriers have nationwide authority and, through their own customer base and interline arrangements, are not dependent upon business

generated by larger carriers as the absence of the former restrictions on carrier operating authorities have been eliminated.

While RMB contends that regional rate bureaus can solve all of the carriers' pricing needs, it, like EC-MAC, has avoided presenting any evidence regarding its costing expertise and methodology for validating general rate actions. That failure is especially significant here because former member carriers of RMB and EC-MAC have stated that they left those bureaus because of their inability to meet the carriers' pricing needs. Other than the rhetoric, RMB, and EC-MAC, utterly fail to offer any substantiation of their self-serving and contradicted claims.

RMB entirely begs the issues presented when it contends that a carrier, inside or outside of the SMC territory, can price its services, can rely on collectively-made rates, or can use CZAR-Lite. Small carriers do encounter great difficulty in pricing their services and have joined SMC precisely for that reason. (See, e.g., Statement of Shippers Express, Inc.; Terminal Trucking Co.; Benton Express, Inc.; Hec Transportation Logistics; Hazard Express, Inc.; and Smith and Waters, Inc.) SMC's carriers do not want to rely on collectively-made rates established by other carriers utilizing unexplained methodologies which are not based on SMC's costs and revenue needs, and do not reveal what data underlies their general rate actions. CZAR-Lite must now incorporate those collectively-made rates because SMC cannot now make a more responsive baseline of class rates in the absence of nationwide collective ratemaking authority. RMB's unsubstantiated generalizations are unfounded.

RMB contends that the evidence and arguments offered by SMC are unconvincing. (RMB Reply, pp. 8-11.) However, it evades contesting that evidence with facts and unconscionably misstates the facts of record. In bootstrapping its incorrect argument that the bulk of rate bureau membership consists of smaller carriers, RMB

fallaciously states that: "Indeed, virtually all of the carriers that have offered statements in support of SMC's latest submission describe themselves as small and acknowledge that they confine their operations to a limited number of Southern states" (footnote omitted). Of the fourteen carrier statements submitted by SMC, eight had 2003 annual revenues vastly in excess of the \$25 million benchmark referenced by the FMCSA and relied upon by RMB. As a further stretch, it attempts to identify Wilson Trucking Corp. with 2003 transportation revenues of about \$122,000,000, and Southeastern Freight Lines, Inc. with 2003 revenues of about \$483,811,000, as small carriers. Equally vexing is RMB's statement that "very few of these carriers operate trucks outside of SMC's territory . . ." (RMB Reply, p. 10.) The record evidences that contention is incorrect. Little credibility or weight can be given to such blatant distortions of the record evidence.

RMB's strained efforts to avoid shipper and transportation intermediary support of SMC's application are obvious. In the face of the statements of major Fortune 500 shippers and major transportation intermediaries detailing the pricing benefits which have resulted from SMC's collective ratemaking activities, and the anticipated benefits from a grant of nationwide authority to the member carriers in establishing class rates based on their own economies and efficiencies; RMB expends two paragraphs dismissing their statements as premised on an "illogical assertion." (RMB Reply, pp. 27-28.)

Its effort to dismiss the support of Cass Information Systems, Inc. as "not a shipper... but an auditing firm" consciously misses the point. (RMB Reply, p. 28, fn. 22.) Robert V. Delaney, then Vice President of Cass Information Systems, Inc., was one of the principal advocates of trucking and rail deregulation in the 1980s. Mr. Delaney had transportation management experience having served as Senior Vice President for Leasway Transportation and Eastern Region Distribution Manager for Ryder Systems, Inc. He also had extensive logistics management experience holding senior positions at

International Paper Company, Pet Incorporated, Monsanto Chemical Company, and Nabisco. Cass Information Systems, Inc. pays nearly 22 million transportation freight bills with an annual value of \$8 billion yearly on behalf of 1,500 manufacturing and distributing business clients. Few individuals or companies bring to the table as much knowledge and insight into motor carrier pricing as Mr. Delaney did. RMB was all too selective in excising language from Mr. Delaney's statement. Avoided for all too obvious reasons are Mr. Delaney's statements that:

In 1997 Cass Information Systems supported SMC's original request for nationwide collective ratemaking authority in SMC's Section 5a Application No. 46 (Sub-No. 20). As then, my company believes that enabling SMC to collectively establish a nationwide basis of class rates reflecting the recognized economies and efficiencies of its member motor carriers will enhance the availability of a competitive rate structure, and facilitate the abilities of shippers and carriers, respectively, to obtain and provide competitive motor carrier pricing options.

* * *

While the regional structure of rate bureaus served the interests of the transportation community in another era, the welcome expansion of the operating authorities of the motor carriers, and the variety of price and service options now available in the marketplace, have created the need of carriers operating nationwide to have their own level of baseline class rates based on their costs and revenue requirements. That tailored mechanism will better enable the carriers to offer competitive rates which, in turn, will benefit shippers.

SMC has been a uniquely responsive organization meeting the needs of both shippers and carriers long before deregulation. Since deregulation SMC has continued to make investments in technology and provide innovative products to meet the needs of both shippers and carriers. Nationwide collective ratemaking authority will enable SMC to expand its creation of valuable pricing services for the transportation community. We respectfully urge the Surface Transportation Board to approve SMC's request for nationwide ratemaking authority.

RMB's effort to brush off that support is understandable but unavailing. Its silence as to the support received from such major corporations as Masco Corporation;

Delta Air Lines, Inc.; Emerson Electric Co.; Hewlett Packard and Gambro is understandable as what could negatively be said. Similarly, RMB is silent as to the support of transportation intermediaries Continental Traffic Service, Inc., having some 150 customers; Kuehne & Nagel which operates in more than 600 locations in 96 countries and has 17,500 employees; and Trinity Transport, Inc. which based on annual volume ranks in the top five percent of transportation intermediaries nationwide, and has over 40 offices located in 26 States. SMC does agree with RMB that the support of Cass Information Systems, Inc. is “typical” of that presented by other members of the transportation community.

Not surprisingly RMB misstates SMC’s position regarding CZAR-Lite. (RMB Reply, pp. 11-14.) SMC does not and never has taken the position that it requires the granting of its application to compile the class rate baseline in CZAR-Lite. What it does require nationwide ratemaking authority to do, is to collectively establish through its member carriers class rates applicable outside of Southern Territory. True, one concern is that CZAR-Lite will be seriously impacted if other rate bureaus continue to go out of business. The reality of that concern was demonstrated in the STB’s Decision served October 16, 2003 in which three bureaus were cited for failing to modify their Section 5a Agreements as required, and subsequently have failed to show cause why their agreements should not be revoked. Not to go unnoticed is that The New England Motor Rate Bureau, Inc., one of the bureaus originally joining with RMB and EC-MAC protesting SMC’s application and stating that SMC was absolutely wrong in its concerns about that bureau’s financial health, has been out of business for several years and has now had its Section 5a Agreement revoked. If RMB and EC-MAC truly are financially sound why have they not responded with information regarding their bureaus? That concern continues to grow.

While CZAR-Lite is indeed a valuable pricing tool, it is dependent upon the general rate actions of other carriers in other bureaus. Again, taking a matter totally out of context, RMB argues that SMC's sole reason for expressing concern about general rate actions being taken on different dates is that CZAR-Lite cannot be adjusted. More importantly, that is a problem for the carriers and shippers who are delayed or impeded in their pricing negotiations. However, as has been pointed out, that delay impacts SMC's member carriers because the recovery of costs and the meeting of their revenue needs created by those increased labor and non-labor costs cannot be addressed until other carriers in other bureaus choose to act. Section 13703(a) of 49 U.S.C. enables carriers, with approval by the STB, to enter into agreements to establish through routes and joint rates, and to make rate adjustments of general application. Nowhere in the statute is a carrier's right to participate in such agreement conditioned on the rate actions taken by other carriers in other agreements. Yet, in light of the nationwide expansion of motor carrier operations, that is precisely what the antiquated and outdated regional ratemaking restriction imposes. As the STB has previously recognized no sound reason exists for the continuation of that anomaly.

CZAR-Lite can be a more effective tool for SMC member carriers and their shippers if its application is granted.

There is no inconsistency in SMC's statements as to the value of CZAR-Lite as is alleged by RMB. (RMB Reply, pp. 15-18.) CZAR-Lite, a shipper conceived pricing tool, enabled shippers and carriers to have access to a pricing mechanism which reduced the complexity of motor carrier rates in the marketplace. But, the expanded operations of SMC's carriers have placed them in territories where the collectively-established rates of other carriers are not suitable for them. Recognition that different carriers operating in different territories have different expenses is a well-established principle in motor carrier

costing, and was acknowledged for decades by the former Interstate Commerce Commission. Why should there be any impediment to SMC's member carriers under a collective ratemaking agreement from responding to their own economic needs in developing a pricing mechanism suitable for their own transportation services?

Issue is taken with RMB's contention that SMC's comparisons of its baseline class rates with those of non-member carriers operating in Southern Territory is irrelevant. (RMB Reply, p. 16.) That comparison shows that the class rate structure collectively developed by SMC's carriers is not unrealistically high when compared to the individually developed baselines of their competitors. Given the shipper and transportation intermediary support for SMC's application evidenced throughout this lengthy proceeding little credence should be accorded RMB's unsubstantiated assumption that "it is fair to assume that the discounts offered from those base rates are lower too." (RMB Reply, p. 16.) As SMC evidenced in response to the STB's truth-in-rates requirement, the discounts provided by its member carriers in 2002 ranged from 21 to 85 percent. Every shipper is assured of a minimum discount of 20 percent. Support from the transportation community would not have been given to SMC's application if SMC's baseline, or discounts, did not result in reasonable and competitive rates.

RMB's attempt to minimize the importance of SMC's Carrier Cost Index and National Traffic Database falls far short of its goal. (RMB Reply, p. 17.) The fact that the law requires collectively-made rates to be reasonable does not, ipso facto, make them so. SMC, on its own initiative, developed a methodology to analyze carrier labor and non-labor costs, and revenue need, to assist the member carriers in determining general rate actions. That information is provided to all participants at the public meetings on general rate actions and to evidence what data is relied upon in making that determination. The failure of RMB and EC-MAC to do so is very troublesome. In 2000,

when shipper associations challenged and the STB suspended and placed under investigation RMB's and EC-MAC's general rate increases, rather than defend those increases as reasonable, they followed SMC's lead, whose general rate increase was not protested, and immediately adopted a 35 percent discount if a shipper had no other discount applicable. Strange conduct indeed for organizations now posturing about rate reasonableness.

RMB attempts to distort Jack E. Middleton's statement regarding SMC's member carriers being forced to rely on a pricing baseline constructed from a patchwork of rates created by other carriers into a position against competition. That attempt falls far short of that result. The baselines RMB and EC-MAC attempt to defend are not the products of competition. Instead, they are established in regions where RMB and EC-MAC are authorized to control the establishment of those class rates. True competition will result if SMC is granted authority to establish class rates for its member carriers in regions where its member carries are also operating.

RMB's contention regarding the danger of SMC's member carriers establishing their own baseline of class rates is contradictory. On the one hand, RMB alleges that SMC's intent is "to control a unitary set of baseline rates on a nationwide basis, to the exclusion of other collectively-made baselines." (RMB Reply, p. 20.) Other bureaus have not expressed that concern obviously recognizing that their baselines meet the needs of their carrier members. Other than speculation, RMB offers absolutely no substantiation for that serious and impertinent allegation. On the other hand, RMB then inconsistently argues that authorizing SMC to have nationwide ratemaking authority would result in too many baselines. RMB cannot have it both ways. Also, the language in the 1998 Decision cited (RMB Reply, p. 20), mainly dealt with the issue of a subsequently abandoned concept of rolling back the collectively-made class rates, and,

nevertheless, was the decision in which the STB first recognized the merit of removing the territorial restrictions of the bureaus. (1998 Decision, p. 10.)

RMB makes many arguments, adopted by EC-MAC, about the perils that would be created to the bureau system if SMC receives nationwide authority. It must be recognized that they are expressing their own fears, and do not speak on behalf of the other motor carrier ratemaking associations which are secure in the services provided to their member carriers and do not oppose SMC's application. In fact, as noted, Pacific Inland Tariff Bureau supports SMC's efforts and acknowledges the value of SMC to it and its member motor carriers. What does RMB and EC-MAC have to fear? If they are serving the needs of their member carriers and are providing the services to the transportation community that are required their concerns are irrational. If they are not, then those fears are understandable, but establishes the need for competition to ensure that carriers and shippers benefit from the activities of a collective ratemaking organization. Many bureaus, because of territorial overlapping have co-existed for many years. There is no reason to believe that SMC will disrupt that co-existence merely because it can serve its member carriers in those other territories.

RMB's recounting of the removal of the legislative prohibition against the STB granting nationwide authority must be viewed with a jaundiced eye. (RMB Reply, pp. 25-26.) How that prohibition came into being to block other bureaus from getting nationwide authority through the efforts of RMB and EC-MAC is the real story, not how SMC restored that authority to the STB to grant such authority if it is in the public interest. Congress did not scrutinize the impact of that prohibition, and the STB was, without consultation or an opportunity to comment, deprived of jurisdiction it possessed and exercised for over 60 years, and was about to implement again in granting the then pending nationwide ratemaking applications. If RMB and EC-MAC need nationwide

ratemaking authority, they have submitted applications to the STB and should petition that those proceedings be reopened. SMC would not protest those efforts.

RMB's contention that SMC does not need nationwide collective ratemaking to serve its member carrier needs results from its obvious confusion as to the SMC carrier base involved. SMC has member carriers which participate in the SMC class rate tariffs. A number of those carriers are domiciled outside of the Southern Territory. As Kevin J. Brink, Vice President—Business Development, Norrenberns Truck Service, Nashville, IL indicated, his company's principal service areas are in the States of Illinois, Kansas and Missouri. Mr. Brink, whose company also participates in RMB, stated:

As a small company we do not have the information technology required in today's transportation market. SMC has been exceptional in meeting those technology needs. We do not possess within our company the cost analysis and ratemaking expertise as do the major less-than-truckload motor carriers.

Because of the current restrictions on SMC's ratemaking authority, it can only develop class rates in Southern Territories. It is unable to do so from our principal territory, namely the states of Illinois, Kansas, and Missouri, to the Western States we serve and to a number of the other territories we reach. NOTS [Norrenberns] requests that SMC be granted nationwide authority so that the organization can develop a fair and reasonable class rate basis throughout our operating area, and include our costs and revenue needs in the baseline.

RMB, without any basis, erroneously seeks to attribute to those carriers some other motivation for joining SMC, namely obtaining member services. (RMB Reply, p. 27.) It then concludes they don't need SMC's collective ratemaking services. Mr. Brink's statement, set forth in SMC's Initial Comments, contradicts RMB's unfounded speculation. If those carriers did not wish to take advantage of SMC's collective ratemaking, there is no need to participate in SMC's class rate tariffs. They could, as have other carriers, merely become associate members, and avail themselves of the involved services. Once more, RMB's contrived contention misses the mark.

RMB and EC-MAC engage in innuendo, distortions and misrepresentations in their effort to prevent SMC from getting nationwide collective ratemaking authority. While they attempt to cast SMC in the role of “bureau killer” that mischaracterization obviously is not shared by the other motor carrier ratemaking organizations. SMC has no desire but to respond to the pricing needs of its member carriers in conducting their operations beyond Southern Territory. If RMB and EC-MAC are not confident that they are meeting the pricing needs of their member carriers, then their concerns are valid. In any event, SMC should have the right to satisfy its member carriers ratemaking requirements—notwithstanding RMB’s and EC-MAC’s hypothetical fears.

VI. Conclusion

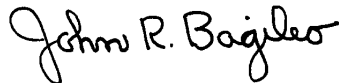
In its Decision served October 16, 2003, in STB Section 5a Application No. 118 (Sub-No. 2), et al., EC-MAC Motor Carriers Service Association, Et AL., the STB granted approval of SMC’s revised Section 5a Agreement. Previously it had been concluded by the agency that SMC’s Agreement would be in the public interest upon compliance with the truth-in-rates notice requirement and the loss-of-discount certification. Those requirements were implemented by SMC and approved by the STB.

Having concluded that the public interest is served by SMC’s present amended Section 5a Agreement, it is submitted that the public interest is further served by extending the implementation of that Section 5a Agreement to the full scope of the transportation operations conducted by the member carriers.

Territorial restrictions are the product of a former regulatory era when carrier operating authorities were restricted geographically, and the various collective ratemaking activities roughly conformed to the transportation operations conducted by the carriers providing service in that region. Most motor carrier ratemaking associations

have responded to the changing needs of the transportation community in today's globalized market, a few have not. Progress and competitive necessity demand that motor carriers expand their services nationwide, and SMC, as well as certain other motor carrier ratemaking associations, are attempting to fully respond to those increased pricing needs. That effort should not be impaired by the few who, rationally or irrationally, believe they cannot compete, and are not concerned as to whether the pricing needs of the SMC member carriers and their shippers can be met.

Respectfully submitted,



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Due and Dated: June 7, 2004

VII.
Certificate of Service

VII.
Certificate of Service

I hereby certify that I have this 7th day of June 2004, served a true and correct copy of the foregoing Rebuttal by first class mail, postage prepaid, upon the following:

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